

BOSTON PUBLIC LIBRARY



3 9999 06317 145 6

No. *PN1992.8.Q5U5

Pt. 1



GIVEN BY

U.S. Congress. House

INVESTIGATION OF TELEVISION QUIZ SHOWS

HEARINGS
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES
EIGHTY-SIXTH CONGRESS
FIRST SESSION

OCTOBER 6, 7, 8, 9, 10, AND 12, 1959

PART 1

Printed for the use of the Committee on Interstate and Foreign Commerce



5213

INVESTIGATION OF TELEVISION QUIZ SHOWS

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH CONGRESS

FIRST SESSION

OCTOBER 6, 7, 8, 9, 10, AND 12, 1959

PART 1

Printed for the use of the Committee on Interstate and Foreign Commerce

PN 1992

8
Q525



pt. 1

UNITED STATES

GOVERNMENT PRINTING OFFICE

WASHINGTON : 1960

PN 1992
.8
. Q5215 Pt. 1

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

OREN HARRIS, Arkansas, *Chairman*

JOHN BELL WILLIAMS, Mississippi
PETER F. MACK, Jr., Illinois
KENNETH A. ROBERTS, Alabama
MORGAN M. MOULDER, Missouri
HARLEY O. STAGGERS, West Virginia
WALTER ROGERS, Texas
SAMUEL N. FRIEDEL, Maryland
JOHN J. FLYNT, Jr., Georgia
TORBERT H. MACDONALD, Massachusetts
GEORGE M. RHODES, Pennsylvania
JOHN JARMAN, Oklahoma
LEO W. O'BRIEN, New York
JOHN E. MOSS, California
JOHN D. DINGELL, Michigan
JOE M. KILGORE, Texas
PAUL G. ROGERS, Florida
ROBERT W. HEMPHILL, South Carolina
DAN ROSTENKOWSKI, Illinois
LAWRENCE BROCK, Nebraska
JAMES C. HEALEY, New York

JOHN B. BENNETT, Michigan
WILLIAM L. SPRINGER, Illinois
ALVIN R. BUSH, Pennsylvania
PAUL F. SCHENCK, Ohio
STEVEN B. DEROUNIAN, New York
J. ARTHUR YOUNGER, California
WILLIAM H. AVERY, Kansas
HAROLD R. COLLIER, Illinois
MILTON W. GLENN, New Jersey
SAMUEL L. DEVINE, Ohio
ANCHER NELSEN, Minnesota
HASTINGS KEITH, Massachusetts

W. E. WILLIAMSON, *Clerk*

KENNETH J. PAINTER, *Assistant Clerk*

Professional Staff

ANDREW STEVENSON
KURT BORCHARDT

SAM G. SPAL
MARTIN W. CUNNINGHAM

SPECIAL SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT

OREN HARRIS, Arkansas, *Chairman*

PETER F. MACK, Jr., Illinois
WALTER ROGERS, Texas
JOHN J. FLYNT, Jr., Georgia
JOHN E. MOSS, California

JOHN B. BENNETT, Michigan
WILLIAM L. SPRINGER, Illinois
STEVEN B. DEROUNIAN, New York
SAMUEL L. DEVINE, Ohio

ROBERT W. LISHMAN, *Chief Counsel*

BEVERLY M. COLEMAN, *Principal Attorney*
JULIUS EANET, *Attorney*
OLIVER EASTLAND, *Attorney*
CHARLES P. HOWZE, Jr., *Attorney*
MARY LOUISE RAMSEY, *Attorney*
RICHARD N. GOODWIN, *Special Consultant*

HUGH M. HALL, Jr., *Research Specialist*
RAYMOND W. MARTIN Jr., *Special Assistant*
STUART C. ROSS, *Consultant*
EDWARD M. JONES, *Investigator*
JAMES P. KELLY, *Investigator*
HAROLD RANSTAD, *Investigator*

HERMAN CLAY BEASLEY, *Chief Clerk*

MINORITY STAFF

JACK MARSHALL STARK, *Minority Counsel*

CONTENTS

	Page
Rules of procedure, Special Subcommittee on Legislative Oversight.....	2
Testimony of—	
Babcock, Harry A., Executive Director, Federal Trade Commission.....	546, 580
Brody, Dr. Nathan.....	44
Connolly, Charles J., legal adviser, Radio and TV Advertising, Federal Trade Commission.....	546, 580
Cowgill, Harold G., Chief, Broadcast Bureau, Federal Communica- tions Commission.....	463
Davis, Alfred.....	93
Doerfer, John C., Chairman, Federal Communications Commission..	463
Dowd, Martin.....	304
Enright, Daniel, accompanied by Charles Murphy, counsel.....	244, 448, 576
Ervin, Thomas E., vice president and general attorney, National Broadcasting Co.....	184
Falke, Kirsten.....	336
Felsher, Howard Davis, accompanied by Charles Fisher, attorney..	404, 415, 458
Fischer, Sy.....	344, 349
Fisher, Thomas K., vice president and general attorney, CBS televi- sion network.....	433
Fitzgerald, John L., General Counsel, Federal Communications Com- mission.....	463
Franklin, Arthur.....	133
Freedman, Albert, accompanied by Charles Murphy, counsel.....	210, 459
Hilgemeier, Edward, Jr.....	285
Hill, Sherman R., director, Bureau of Investigation, Federal Trade Commission.....	546, 580
Hillman, Antoinette DuBarry.....	278
Huschle, David.....	263
Jackman, Richard.....	116, 119
Janofsky, Richard.....	45
Jurist, Edward.....	313, 379
Kiutner, Earl W., Chairman, Federal Trade Commission.....	546, 580
Kitzing, Irene Falke.....	342
Kletter, Edward.....	155
Leibbrand, Rose.....	111
Lieber, Eric.....	347
McAleer, Frank C., Assistant to General Counsel, Federal Trade Commission.....	546, 580
McCauley, Daniel J., Jr., General Counsel, Federal Trade Com- mission.....	546, 580
Moore, Charles R., legal adviser to Bureau of Investigation, Federal Trade Commission.....	546, 580
Pinkham, Richard A. R.....	385
Snodgrass, James.....	59
Stempel, Herbert.....	14, 46
Additional information submitted for the record—	
Federal Communications Commission:	
Correspondence with—	
Columbia Broadcasting System.....	465-477
National Broadcasting Co.....	479-482
Stone, Joseph, assistant district attorney, county of New York.....	484-488
History of rules requiring announcement of the use of mechanical reproductions on broadcasting programs.....	495

Additional information submitted for the record—Continued

	Page
Federal Trade Commission:	
Docket 7304—In the matter of Teleradio Advertisers.....	586
Letter from Earl W. Kintner, Chairman.....	565
Harris, Hon. Oren:	
Affidavit on motion for an inspection of grand jury minutes.....	612
Correspondence with—	
Federal Communications Commission.....	13, 14
Federal Trade Commission.....	10-13
Letters to Hon. Frank S. Hogan, district attorney, county of New York.....	617, 618
Press release, July 31, 1959.....	615
Hilgemeier, Eddie, affidavit of.....	286
Hogan, Hon. Frank S.:	
Letter from.....	617
Memorandum of law.....	605
Jurist, Edward, interrogation of, by Charles P. Howze, Jr., attorney for the subcommittee.....	380
Kletter, Edward:	
Geritol sales, 1956-59.....	167
Memo of amount paid to Richard Jackman.....	182
Lishman, Robert W.:	
Notice of motion for an inspection of grand jury minutes.....	615
Sound track of "Dotto" dated—	
February 25, 1958.....	280
May 20, 1958.....	290
July 15, 1958.....	264
Sound track of "Twenty-one" dated—	
October 3, 1956.....	120
November 28, 1956.....	16
December 5, 1956.....	37
May 13, 1957.....	64
May 20, 1957.....	78
National Broadcasting Co., letter from Thomas E. Ervin.....	195
Schweitzer, Hon. Mitchell D., order granting motion for inspection of grand jury minutes.....	616
Snodgrass, James, letters of.....	63, 64, 75, 76
Stempel, Herbert, checks from Daniel Enright.....	33, 34

INVESTIGATION OF TELEVISION QUIZ SHOWS

TUESDAY, OCTOBER 6, 1959

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON LEGISLATIVE
OVERSIGHT OF THE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The special subcommittee met at 10 a.m. in the caucus room, Old House Office Building, Hon. Oren Harris (chairman) presiding.

Present: Representatives Harris, Mack of Illinois, Rogers of Texas, Flynt, Moss, Springer, Derounian, and Devine.

Also present: Robert W. Lishman, counsel to the subcommittee; Beverly M. Coleman, subcommittee principal attorney; Charles P. Howze, subcommittee attorney; Richard N. Goodwin, subcommittee special consultant; Herman Clay Beasley, subcommittee clerk; and Jack Marshall Stark, minority counsel.

The CHAIRMAN. The subcommittee will be in order.

The Subcommittee on Legislative Oversight of the House Committee on Interstate and Foreign Commerce has met this morning to begin the taking of testimony to assist the committee in considering legislation pertaining to Federal regulatory agencies within its jurisdiction and pertaining to "advertising, fair competition, and labeling," as set forth in House Resolution 56, section (6).

The particular Federal regulatory agencies now involved and about which I will speak later are the Federal Trade Commission and the Federal Communications Commission.

The Special Subcommittee on Legislative Oversight was originally created pursuant to section 136 of the Legislative Reorganization Act of 1946 (60 Stat. 812, 2 U.S.C. sec. 190(d), H. Res. 99 and 152, 85th Cong., 1st sess., as amended), to conduct a general investigation into the operation of the Federal regulatory agencies. The principal aims of the subcommittee's investigations have been to determine whether or not the agencies have been administering the statutes under which they operate in accordance with the intent of the Congress, express or implied, and whether the enabling statutes are adequate to meet today's changed conditions.

The subcommittee's authority to hold these hearings is based on the Legislative Reorganization Act of 1946 (60 Stat. 812, 2 U.S.C. sec. 190(d), H. Res. 7, 86th Cong., and H. Res. 56, 86th Cong.), adopted January 28, 1959.

The texts of House Resolution 7 and House Resolution 56, rule XI, 26, of the Rules of the House of Representatives, and of the subcommittee's statement of policy of May 20, 1959, are all contained in the rules of procedure of the subcommittee which were adopted on May 20, 1959. These rules will be included in the record.

(Rules of procedure referred to follow:)

RULES OF PROCEDURE

Special Subcommittee on Legislative Oversight of the House Committee on Interstate and Foreign Commerce (H. Res. 56, 86th Congress) U.S. House of Representatives

EIGHTY-SIXTH CONGRESS

SPECIAL SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT

OREN HARRIS, Arkansas, *Chairman*

PETER F. MACK, JR., Illinois
WALTER ROGERS, Texas
JOHN J. FLYNT, JR., Georgia
JOHN E. MOSS, California

JOHN B. BENNETT, Michigan
WILLIAM L. SPRINGER, Illinois
STEVEN B. DEROUNIAN, New York
SAMUEL L. DEVINE, Ohio

ROBERT W. LISHMAN, *Chief Counsel*
HERMAN CLAY BEASLEY, *Chief Clerk*

The special Subcommittee on Legislative Oversight was appointed under the authority of section 136 of the Legislative Reorganization Act of 1946 (60 Stat. 812, H. Res. 7, 86th Cong., and H. Res. 56, 86th Cong.), agreed to January 28, 1959.

[H. Res. 7, 86th Cong., 1st sess.]

IN THE HOUSE OF REPRESENTATIVES

January 7, 1959

Mr. SMITH of Virginia submitted the following resolution; which was considered and agreed to

RESOLUTION

Resolved, That the rules of the House of Representatives of the 85th Congress, together with all applicable provisions of the Legislative Reorganization Act of 1946, as amended, be, and they are hereby, adopted as the rules of the House of Representatives of the 86th Congress.

[H. Res. 56, 86th Cong., 1st sess.]

IN THE HOUSE OF REPRESENTATIVES

January 7, 1959

Mr. HARRIS submitted the following resolution; which was referred to the Committee on Rules

January 26, 1959

Reported with amendments, referred to the House Calendar, and ordered to be printed

January 27, 1959

Considered and agreed to

RESOLUTION

Resolved, That effective from January 3, 1959, the Committee on Interstate and Foreign Commerce may make investigations and studies into matters within its jurisdiction, including the following:

(1) Policies with respect to competition among the various modes of transportation, whether rail, air, motor, water, or pipeline; measures for increased safety; and adequacy of the national transportation system for defense and the needs of an expanding economy;

(2) Policies with respect to the promotion of the development of civil aviation; measures for increased safety; restrictions on American air carriers which impede the free flow of commerce; routes, rates, accounts, and subsidy payments; airport construction, hazards of adjacency to airports, and condemnation of airspace; aircraft and airline liability; aircraft research and development, and market for American aircraft; and air navigational aids and traffic control;

(3) Allocation of radio spectrum; color television; pay television; educational television; ownership and control of radio and television stations; technical developments in the communications field;

(4) Adequacy of the protection to investors afforded by the disclosure and regulatory provisions of the various Securities Acts;

(5) Adequacy of petroleum, natural gas, and electric energy resources for defense and the needs of an expanding economy; adequacy, promotion, regulation, and safety of the facilities for extraction or generation, transmission and distribution of such resources; development of synthetic liquid fuel processes; and regulation of security issues of and control of natural gas pipeline companies;

(6) Advertising, fair competition, and labeling;

(7) Research in weather, including air pollution and smog, and artificially induced weather;

(8) Effects of inflation upon benefits provided under railroad retirement and railroad unemployment programs; and inequities in provisions of statutes relating thereto, with comparison of benefits under the social security system;

(9) Adequacy of medical facilities, medical personnel, and medical teaching and training facilities; research into human diseases; provisions for medical care; efficient and effective quarantine; protection to users against incorrectly labeled and deleterious foods, drugs, cosmetics, and devices; and other matters relating to public health;

(10) Disposition of funds arising from the operation of the Trading With the Enemy Act;

(11) Current and prospective consumption of newsprint and other papers used in the printing of newspapers, magazines, or such other publications as are admitted to second-class mailing privileges; current and prospective production and supply of such papers, factors affecting such supply, and possibilities of additional production through the use of alternative source materials;

(12) Increase in traffic accidents on the streets and highways of the United States during recent years; factors responsible for such increase, the resulting deaths, personal injuries, and economic losses; and measures for eliminating such accidents or reducing their frequency and severity; and

(13) The administration and enforcement by departments and agencies of the Government of provisions of law relating to subjects which are within the jurisdiction of such committee.

Provided, That the committee shall not undertake any investigation of any subject which is being investigated by any other committee of the House.

For the purposes of such investigations and studies the committee, or any subcommittee thereof, may sit and act during the present Congress at such times and places within the United States, whether the House has recessed, or has adjourned, to hold such hearings, and to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any member of the committee designated by him, and may be served by any person designated by such chairman or member.

The committee may report to the House at any time during the present Congress the results of any investigation or study made under authority of this resolution, together with such recommendations as it deems appropriate. Any such report shall be filed with the Clerk of the House if the House is not in session.

RULES OF PROCEDURE

SPECIAL SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT OF THE HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

(Adopted May 20, 1959)

(Issued Pursuant to H. Res. 7, H. Res. 56, and Rule XI (26, (k) and (l), Rules of the House of Representatives, 86th Congress (H. Doc. 458, 85th Congress))

1. The Subcommittee shall conduct investigations pertaining to the workings of the independent regulatory commissions and agencies which are subject to the jurisdiction of the parent committee and pertaining to the adequacy of existing commission and agency laws and regulations and their administration. The investigations are intended to assist the Subcommittee in making legislative or other recommendations to the Congress and to the administrative commissions and agencies, and to fulfill the duty of legislative oversight and supervision provided in the Legislative Reorganization Act of 1946.

2. The subject of any investigation in connection with which witnesses are summoned or shall otherwise appear shall be announced by the Chairman of the Subcommittee before commencement of any hearing. The information sought to be elicited in the hearing shall be relevant and germane to the subject as so stated.

3. Subpenas shall be signed and issued by the Chairman of the Committee on Interstate and Foreign Commerce or any member of the Subcommittee designated by the Chairman. Witnesses shall be subpoenaed at a reasonably sufficient time to be determined by the Chairman in advance of any hearing, in order to give the witness an opportunity to prepare for the hearing and to employ counsel should he so desire.

4. If the Subcommittee determines that the interrogation of a witness in a public hearing might endanger national security or unjustly injure his reputation or the reputation of other individuals, the Subcommittee shall interrogate such witness in an executive session for the purpose of determining the necessity or advisability of conducting such interrogation thereafter in a public hearing.

5. Attendance at executive sessions shall be limited to members of the Subcommittee, its staff, and other persons whose presence is requested or consented to by the Subcommittee.

6. All discussion, testimony, and action occurring in executive session shall be kept secret and shall not be released or used in public sessions without the consent of the Subcommittee.

7. All other hearings shall be public.

8. A subcommittee quorum for the purpose of taking testimony shall consist of not less than two members. No hearing shall be conducted in the absence of a quorum of the Subcommittee.

9. All witnesses at public or executive hearings who testify as to matters of fact shall give all testimony under oath or affirmation. Only the Chairman or a member of the Subcommittee shall be empowered to administer such oath or affirmation.

10. A complete and accurate record shall be kept of all testimony and proceedings at hearings, both in public and in executive session.

11. Any witness or his counsel, upon approval of the Chairman and at the expense of the witness, may obtain a transcript of public testimony of the witness.

12. Any witness or his counsel, upon approval of the Chairman and at the expense of the witness, may also obtain a transcript of any executive testimony of the witness when a special release of said testimony prior to public release is authorized by the Chairman, or after said testimony has been made public by the Subcommittee.

13. At every investigative hearing, public or executive, witnesses may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights. The failure of a witness to secure counsel shall not excuse such witness from attendance in response to a subpoena.

14. The participation of counsel during the course of any investigative hearing shall be limited to advising the witness as to his constitutional rights. Counsel shall not be permitted to engage in oral argument with the Subcommittee or to cross-examine, but shall confine his activity to the area of such advice to his client.

This rule shall not be construed as authorizing counsel to coach the witness, answer for the witness, or put words in the witness' mouth, or as excusing a witness from testifying in the event his counsel is ejected for contumacy or disorderly conduct.

15. The privilege of a witness to be accompanied by counsel shall not be exercised in such a manner as to interfere with the orderly conduct of the investigative hearing or to diminish in any respect the Subcommittee's control of the conduct of such hearing.

16. Any witness desiring to make a prepared or written statement for the record of the investigative proceedings in public or executive session, insofar as it is practicable, shall file a copy of such statement with the counsel of the Subcommittee within a reasonable period of time in advance of the hearing at which the statement is to be presented.

17. All such statements so received which are relevant and germane to the subject of the investigation, upon approval of the majority of the Subcommittee, may be inserted into the official transcript of the proceedings.

18. All witnesses shall be limited to giving information relevant and germane to the subject under investigation. The Subcommittee shall rule upon the admissibility of all testimony or information presented by the witness.

19. At the conclusion of his testimony, or at the conclusion of testimony of a witness who has commented on him adversely, any person appearing before the Subcommittee shall have the privilege, upon approval of the Subcommittee, to file a supplementary written sworn statement of facts, provided this privilege is exercised within a reasonable time to be fixed by the Chairman.

20. Each witness who has been subpoenaed or who has appeared at the request of the Subcommittee, upon the completion of his testimony, may report to the office of the Clerk of the Subcommittee and there sign appropriate vouchers for travel allowances and attendance fees upon the Subcommittee. If hearings are held in cities other than Washington, D.C., the witness may contact the Clerk of the Subcommittee, or his representative, prior to leaving the hearing room.

21. The foregoing Rules of Procedure are subordinate to the Rules of the House of Representatives and are to be interpreted and applied in conjunction with and in conformity to the Rules of the House.

APPENDIX I

Rule XI, 26, Rules of the House of Representatives

(a) The rules of the House are the rules of its committees so far as applicable, except that a motion to recess from day to day is a motion of high privilege in committees. Committees may adopt additional rules not inconsistent therewith.

(b) Each committee shall keep a complete record of all committee action. Such record shall include a record of the votes on any question on which a record vote is demanded.

(c) All committee hearings, records, data, charts, and files shall be kept separate and distinct from the congressional office records of the Member serving as chairman of the committee; and such records shall be the property of the House and all Members of the House shall have access to such records. Each committee is authorized to have printed and bound testimony and other data presented at hearings held by the committee.

(d) It shall be the duty of the chairman of each committee to report or cause to be reported promptly to the House any measure approved by his committee and to take or cause to be taken necessary steps to bring the matter to a vote.

(e) No measure or recommendation shall be reported from any committee unless a majority of the committee were actually present.

(f) Each committee shall, so far as practicable, require all witnesses appearing before it to file in advance written statements of their proposed testimony, and to limit their oral presentation to brief summaries of their argument. The staff of each committee shall prepare digests of such statements for the use of committee members.

(g) All hearings conducted by standing committees or their subcommittees shall be open to the public, except executive sessions for marking up bills or for voting or where the committee by a majority vote orders an executive session.

(h) Each committee may fix the number of its members to constitute a quorum for taking testimony and receiving evidence, which shall be not less than two.

(i) The chairman at an investigative hearing shall announce in an opening statement the subject of the investigation.

(j) A copy of the committee rules, if any, and paragraph 26 of rule XI of the House of Representatives shall be made available to the witness.

(k) Witnesses at investigative hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(l) The chairman may punish breaches of order and decorum, and of professional ethics on the part of counsel, by censure and exclusion from the hearings; and the committee may cite the offender to the House for contempt.

(m) If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—

(1) receive such evidence or testimony in executive session;

(2) afford such person an opportunity voluntarily to appear as a witness; and

(3) receive and dispose of requests from such person to subpoena additional witnesses.

(n) Except as provided in paragraph (m), the chairman shall receive and the committee shall dispose of requests to subpoena additional witnesses.

(o) No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the committee.

(p) In the discretion of the committee, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The committee is the sole judge of the pertinency of testimony and evidence adduced at its hearing.

(q) Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session, or, if given at an executive session, when authorized by the committee.

APPENDIX II

OUTLINE OF SUBCOMMITTEE ACTIVITIES

The Special Subcommittee on Legislative Oversight on May 20, 1959, adopted a policy outlining the scope of the Subcommittee's activities. The policy adopted is as follows:

Purposes

To examine the execution of the laws by the administrative agencies, administering laws within the legislative jurisdiction of the parent committee, to see whether or not the law as the Congress intended in its enactment has been and is being carried out or whether it has been and is being repealed or revamped by those who administer it. The Subcommittee will conduct investigations pertaining to the working of these independent regulatory commissions and

agencies and pertaining to the adequacy of existing commission and agency laws and regulations and their administration. Such investigations are to assist the Subcommittee in making legislative or other recommendations to the Congress and to the administrative commissions and agencies, and to fulfill the duty of legislative oversight and supervision as provided in the Legislative Reorganization Act of 1946. In pursuance of the foregoing, the Subcommittee will also conduct investigations and make reports concerning matters referred to in the report of the Special Subcommittee on Legislative Oversight, 85th Congress, 2d Session, House Report No. 2711.

Agencies To Be Examined

(1) Civil Aeronautics Board, Federal Aviation Agency, Federal Communications Commission, Federal Power Commission, Federal Trade Commission, Food and Drug Administration, Interstate Commerce Commission, Securities and Exchange Commission;

(2) Bureau of Standards, National Institutes of Health, Weather Bureau; and

(3) Foreign Claims Settlement Commission, Office of Alien Property, Public Health Service, Railroad Retirement Board, and other agencies within legislative jurisdiction of the committee.

Subjects To Be Considered

(1) Review and analysis of the laws and amendments, and intent of the Congress when enacted;

(2) Area of the field regulated by each law, changing circumstances, and growth of the field since enactment;

(3) Consideration of the legislative standards in the law to determine whether they can be drafted in more precise terms with the view of reducing administrative discretion;

(4) Consideration of rules and regulations issued by the agency under the discretionary delegations, reconciliation with statutory standards and legislative intent, manner in which rules have been applied in practice;

(5) Administrative interpretations and practices apart from formal rules and regulations, public notice of such interpretations and practices, extent to which in fact administration is by internal interpretations as distinguished from published rules;

(6) Judicial decisions on the administration of the law by the agency, the statutory standards, rules and regulations, and administrative interpretations, enlargement of area of regulation supported by the decisions;

(7) Enforcement of statute, rules, and regulations; and

(8) Organization of agency:

(a) Independence and bipartisanship of commission, as intended in its creation; identification of the regulators with the regulated;

(b) Personnel: Experience, relationship to agency policy, status under civil service; and

(c) Workload, distribution of personnel as to statutory duties or on duties assumed through administrative interpretations, coordination with State and other regulatory agencies, trade, or industry enforcement groups.

The CHAIRMAN. Before testifying, each witness has received or will receive a printed copy of these rules and his especial attention called to pages 4, 7, 8, and 9, wherein among other things, provision is made for a witness to have the privilege of being accompanied by counsel for the purpose of advising him concerning his constitutional rights.

Over the last year or so, the subcommittee has received numerous complaints regarding the conduct of so-called television quiz programs. Beginning in 1955, television audiences were attracted on a mass scale by several packaged programs which featured contests between selected members of the public who undertook to answer questions asked by a master of ceremonies. The contestants, in proportion to their competitive success, were awarded prizes of sums of money or of merchandise. Some contestants were able to gross sums in excess of \$200,000.

The quiz programs were represented to the viewing public as honest contests of skill, knowledge, and the ability to remember and think

quickly under pressure. Elaborate precautions were taken to create the impression that no favoritism could possibly be shown one contestant over another. Internationally respected financial institutions lent their names and facilities to bolster the public image of gilt-edged integrity. Distinguished educators were said to have approved questions for accuracy and degree of difficulty. Studio audiences were repeatedly warned against any audible reaction that might be construed as a hint to the contestant. On some programs, contestants were placed in ostensibly soundproof booths to prevent their hearing questions asked their opponents.

Many of the contestants had strong personal appeal and during their week-by-week appearances attracted a large personal following. Contestants became nationally publicized figures.

In August 1958, there came allegations that on one of the quiz programs questions were asked to which answers had been secretly furnished the contestant before the program went on the air. An investigation of the charge was made within the television industry, and shortly thereafter the program was replaced. Following this incident, other allegations were made relating to other quiz programs. These were met with denials and by cross-accusations.

On September 17, 1958, the third September 1958 grand jury was impaneled by the court of general sessions of New York County to inquire into allegations which had been made respecting quiz programs, for the purpose of determining whether the facts disclosed might show a violation of New York law. The grand jury heard evidence over a 9-month period from some 200 witnesses. On July 10, 1959, it handed down a report and presentment setting forth its conclusions. The presentment has been sealed by the court and has not as yet been made public.

The Subcommittee on Legislative Oversight has jurisdiction over the Federal Trade Commission, which is charged with preventing and suppressing " * * * unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce" (Federal Trade Commission Act, as amended, 52 Stat. 111, 15 U.S.C., sec. 45), and over the Federal Communications Commission, which is charged with insuring that broadcasting station licensees operate so as to serve " * * * public interest, convenience, and necessity" (Federal Communications Act of 1934, as amended, sec. 309(a), 70 Stat. 3, 47 U.S.C. sec. 309(a)).

At the conclusion of this statement there will be included in the record copies of letters I sent on August 18, 1959, to the Chairmen of the Federal Trade Commission and the Federal Communications Commission in which I sought their views as to the jurisdiction of their respective agencies to inquire into the allegedly "rigged" television quiz programs. Their answers will also be included.

In 1958, when the aforesaid allegations were first made, the subcommittee began making preliminary inquiries to discover whether they were true. Upon learning that the grand jury had been impaneled to make a thorough study of the matter, the subcommittee, and I think wisely so, decided to postpone its investigation pending the results of the grand jury inquest.

When we learned that the grand jury's presentment had been sealed by Hon. Mitchell D. Schweitzer, judge of the New York

County court of general sessions, the subcommittee resumed its efforts to uncover the facts. Representatives of the subcommittee conferred with Hon. Frank S. Hogan, district attorney of New York County, whose office had managed the grand jury investigation. District Attorney Hogan had filed with the court of general sessions a memorandum of law setting forth reasons why the public interest required that the grand jury's presentment be made public.

The presentment did not mention any individuals, companies, or quiz programs by name. It reflects conclusions of the grand jury, reached after it had "examined the practices of six of the most popular television quiz programs." Also, according to District Attorney Hogan's legal memorandum on file in court, the presentment concluded—

* * * with a recommendation that copies thereof be forwarded to certain specified agencies which are in position to assist in rectifying the condition.

Our subcommittee, charged as it is with the duty of investigating and making recommendations concerning the statutes administered by Federal agents and their enforcement pertaining to advertising, unfair competition, and broadcasting, is obviously one of the agencies within the scope of the grand jury recommendations.

However, for subcommittee purposes, access to the presentment is of far less importance than access to the testimony and exhibits upon which it was based.

In order to formulate a legislative remedy we must have a hearing record clearly showing the facts of the problem to be remedied. We cannot legislate on the basis of accepting the conclusions in a presentment, however wise and correct these conclusions may be. This does not mean, as I point out later, that we are interested in the matter for the purpose of exposing or ridiculing any of the participants, whether they be contestants, producers, advertising agencies, sponsors, or broadcasting companies. On the contrary, we are taking every reasonable precaution to prevent this. The subcommittee, therefore, obtained an order from Judge Schweitzer granting us access to the grand jury testimony. Since the judge had already sealed the presentment and we were primarily interested in seeing the testimony with its specific mention of persons, times, and places, we made no request to see the presentment.

In its order granting the subcommittee access to the minutes and exhibits of the grand jury, the court specified "that said minutes are not to be published but to be used solely for investigative purposes or for proper impeachment purposes." The subcommittee is thus bound not to disclose information from the grand jury minutes unless testimony is given in our hearings that conflicts with that given by a witness before the grand jury.

Our access to the grand jury minutes aids us in the following respects: Time and money will be saved. Our investigators do not have to duplicate District Attorney Hogan's 9-month job of questioning a multitude of witnesses and exploring leads. We can select and limit the number of witnesses to be called before us. Because of our access to the investigatory work already done, we can in a comparatively few days of hearing establish the facts necessary to accomplish our legislative purpose and duty. Instead of having to call in 20 witnesses, we can do it by calling only 1 or 2.

The testimony before us will be more trustworthy, since the witnesses are faced with our ability to confront them with their previous sworn testimony before the grand jury.

We shall endeavor to prevent unnecessary exposure and ridicule of a witness. Some participants in the quiz show programs have denied any wrongdoing, both in testimony before the grand jury and in interviews with our subcommittee investigators. In some instances we have been unable to uncover sufficient evidence to refute these denials. In these situations the subcommittee will not call participants as witnesses.

It is our expectation, based on information now in our possession, that our hearings will disclose that the improprieties alleged in the conduct of certain quiz programs extend even beyond what we had originally suspected. Our investigation indicates that a number of "control" techniques have been used by those responsible for the commercial success of these shows in a deliberate effort to favor some contestants over others. We expect to hear testimony concerning the details of these techniques, some of which were subtle and ingenious.

The subcommittee believes that if its hearings lay bare a pattern of deception of the American public in some instances through these quiz shows, a serious gap in the present regulation of broadcasting practices and of "unfair methods of competition in commerce, or unfair or deceptive acts or practices in commerce" will be revealed.

Few would care to watch a full half-hour of "commercials" on television. The American people do not submit voluntarily to advertisements of a sponsored product without additional attractions. It follows from this that the television program presented to attract the public is closely tied to the advertising of the sponsor's product.

Apart from the competition of one program owner, packager, or producer against another for the high program rating necessary to attract commercial sponsorship, the subcommittee believes that the deliberate cultivation in viewers' minds of the inseparability of the program and the product advertised compels inquiry into the fairness and honesty of program presentation as well as the fairness and honesty of representations made about the sponsor's product itself.

We do not feel that the quiz programs under our consideration are "mere entertainment" in the same sense that a movie or other dramatic production is entertainment. Everyone knows that dramatic productions are carefully rehearsed. The same can be said of professional wrestling matches which are required by law in some jurisdictions to be designated "exhibitions" and not as "contests" or "matches".

The subcommittee expects to show that sponsors, advertising agencies, owners, packagers, producers, networks and station licensees, as well as many contestants, all benefited from the extraordinary appeal of the quiz shows to the public. It is not the subcommittee's function to prejudice whether existing law has been violated; but, if existing law has not been violated, then we believe that it is our duty to recommend to the Congress legislation that will make a repetition of any such deceptive practices too risky to attempt in the future.

It must be understood by everyone concerned that our inquiry into the conduct of television quiz show programs is not an attempt to

exercise any power of censorship. The subcommittee is interested solely in whether commercial deceit has been practiced on a national scale by means of deliberate and willful holding out to the public as honest contests, performances which were rigged in advance.

It is one thing to arouse and hold the attention of the viewing public by programs which are openly and avowedly pure fiction and should be known as such to any reasonable person. It is quite another thing, however, when the airwaves, belonging to the people, whose free use has been licensed by the Federal Communications Commission, are used deceitfully to exploit for private profit the interest of the viewing public.

Our hearings will take up several programs. The first one will be "Twenty-one," which was produced on the National Broadcasting Co. network by Barry & Enright Productions, Inc., and sponsored by Pharmaceuticals, Inc., manufacturers of Geritol and other medicinal products. This was one of the six shows which were the subject of the New York County grand jury investigation.

(Letters referred to are as follows:)

AUGUST 18, 1959.

HON. EARL W. KINTNER,
Chairman, Federal Trade Commission,
Washington, D.C.

DEAR MR. KINTNER: The subcommittee is studying certain television quiz show programs to ascertain, among other things, the adequacy of the Federal Trade Commission and the Federal Communications Commission enabling statutes to prevent a repetition of palming off upon the public of dishonest schemes as honest contests of skill.

These programs we understand on the basis of presently available information may not have actually misrepresented an advertised product. However, they deceived millions of persons into repeated viewing and hearing of advertisements of certain products with resultant tremendous increases in the sales thereof. Meanwhile, equally good competing products whose advertising campaigns were honest suffered sales losses or did not keep up competitively.

In the near future the subcommittee will hold hearings concerning this matter. We should appreciate early advice from you as to the nature and extent of your Commission's jurisdiction over prize contest television programs of the kind described above and over the persons responsible therefor.

Sincerely yours,

OREN HARRIS,
Member of Congress, Chairman.

FEDERAL TRADE COMMISSION,
Washington, D.C., September 3, 1959.

HON. OREN HARRIS,
Chairman, Special Subcommittee on Legislative Oversight,
House Committee on Interstate and Foreign Commerce,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in further response to your letter of August 18, 1959, regarding prize contest television programs in situations where arranged contests are falsely represented to the public as honest tests of skill. You inquire as to the nature and extent of the Federal Trade Commission's jurisdiction over such programs and over the persons responsible therefor.

Your letter recites that, while there may have been no misrepresentation of products advertised, millions of persons were deceived into viewing and hearing advertisements with resultant increases in the sales of products so advertised to the disadvantage of competing products.

The Commission has made no investigation of the matters to which you refer and, consequently, is not in a position to evaluate the responsibility of those whose products were advertised for the nature of the programs on which the advertisements were presented. In any event, the Commission has not exercised jurisdiction with respect to practices of the kind related in your

letter and, in my opinion, there is a serious question as to whether such jurisdiction exists.

The pertinent provision of law to be considered is section 5 of the Federal Trade Commission Act, which prohibits "unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce." Under that section the Commission on many occasions has proceeded against false and deceptive advertising. However, the situation related by your letter does not involve any false or deceptive advertising, but rather what may be termed "deceptive entertainment" in the course of which advertisements, which are not challenged, were made.

In the leading case of *Federal Trade Commission v. R. F. Keppel & Bro.* (291 U.S. 304 (1934)), the Commission was sustained in ordering a manufacturer to cease and desist selling its candy products in packages so arranged as to induce the resale of such candy by a game of chance. In that case the practice prohibited was directly connected with the merchandising of the product and the "game of chance" aspect was deemed an unfair method of competition on the following basis:

"* * * It is true that the statute does not authorize regulation which has no purpose other than that of relieving merchants from troublesome competition or of censoring the morals of businessmen. But here the competitive method is shown to exploit consumers, children, who are unable to protect themselves. It employs a device whereby the amount of the return they receive from the expenditure of money is made to depend upon chance. Such devices have met with condemnation throughout the community. Without inquiring whether, as respondent contends, the criminal statutes imposing penalties on gambling, lotteries, and the like, fail to reach this particular practice in most of any of the States, it is clear that the practice is of the sort which the common law and criminal statutes have long deemed contrary to public policy."

The situation which you have described differs from the principles under which the *Keppel* case was decided in that the "deceptive entertainment" constitutes simply the surrounding circumstances during which the nondeceptive advertisements were made, is not an intricate part of the sale and does not itself exploit customers who are unable to protect themselves in the sense that the game of chance appealed to children. Neither can it be said that "deceptive entertainment" has long been deemed contrary to public policy by the common law and criminal statutes.

The case of *Northam Warren Corp. v. Federal Trade Commission*, (59 F. 2d 196 (C.A. 2, 1932)), involved a Commission proceeding with respect to undisclosed circumstances surrounding the making of representations concerning particular products. The situation was that a manufacturer of toilet articles had paid certain well-known persons of the theater and social life considerable sums of money for testimonials. The Commission had not challenged the truthfulness of the testimonials, but had found that the failure to disclose that payment had been made for the testimonials constituted an unfair method of competition under the Federal Trade Commission Act. This case is comparable to the situation described in your letter inasmuch as the Commission's complaint was directed at the means whereby the public's attention was directed to testimonials or advertisements and an undisclosed situation existing in connection therewith, rather than the truth or falsity of the testimonials or advertisements themselves.

The court of appeals in the *Northam Warren* case held that, inasmuch as there were no misrepresentations as to the products involved, the Commission was without jurisdiction. In the course of so holding, the court stated:

"The Federal Trade Commission Act (15 U.S.C.A. 41-51) does not purport to establish a decalogue of good business manners or morals * * *. Even if a practice may be regarded as unethical, it would still be beyond the purview of the act if it lacks the public interest necessary to support the Commission's jurisdiction * * *. The strongest argument the respondent makes is that failure to state the price paid for the testimonial amounts to deception and misrepresentation concerning the petitioner's product and in that way the petitioner is able to deprive honest manufacturers of a market. *Federal Trade Comm. v. Winsted Hosiery Co.*, 258 U.S. 483, 42 S. Ct. 384, 66 L. Ed. 729. But where unlawful restraint of trade has been ordered to be discontinued, it has always appeared that there was some dishonesty in labeling or marketing the goods * * *."

In both the *Keppel* and *Northam Warren* cases referred to above, the courts were concerned with the extent to which the Commission should attempt to

censor the morals of businessmen. This question of censorship is of vital consideration in appraising the Commission's jurisdiction over the "deceptive entertainment" described by your letter. If the Commission were to assert jurisdiction over entertainment, it would be difficult to set a limit at which this censorship should stop. For example, some States do not allow wrestling matches except when billed as exhibitions rather than as contests. The Commission has not had occasion to investigate the matter and has no information as to whether, in fact, wrestling matches are true contests of skill or planned exhibitions. However, if the Commission were to exercise jurisdiction over "deceptive entertainment," it would consequently be appropriate to investigate the true nature of wrestling matches presented over television during which commercials of sponsors are presented to the public.

The Commission's jurisdiction would not stop at "deceptive entertainment," but would logically have to continue to a complete censorship of all such entertainment. This would take the Commission far afield from what are presently conceived to be its delegated functions.

I do not believe that by enactment of the Federal Trade Commission Act the Congress intended the Commission to become censors of television entertainment. In fact, the Federal Communications Commission, which has a much more direct statutory authority over radio and television transmission, is specifically foreclosed by statute from exercising "the power of censorship over the radio communications or signals transmitted by any radio station" (47 U.S.C. 326).

I am, therefore, of the opinion that, absent a clear directive by the Congress, the Commission is not authorized to exercise its section 5 Federal Trade Commission Act jurisdiction over the situations such as that described in your letter.

With kindest regards.

Sincerely yours,

EARL W. KINTNER, *Chairman.*

FEDERAL TRADE COMMISSION,
Washington, October 12, 1959.

HON. OREN HARRIS,
*Chairman, Special Subcommittee on Legislative Oversight,
House Committee on Interstate and Foreign Commerce,
Washington, D.C.*

DEAR MR. CHAIRMAN: By letter of September 3, 1959, in response to your inquiry of August 18, 1959, I expressed my opinion as to the nature and extent of the jurisdiction of the Federal Trade Commission over prize contest television programs in situations where arranged contests are falsely represented to the public as honest contests of skill.

In the course of that letter, I indicated that the Commission had made no investigation of such a matter and had not exercised jurisdiction with respect to such an alleged practice.

It has since come to my attention, in fact just this past Friday, that the Commission's staff did investigate a complaint received in December 1956, to the effect that a television quiz program was being conducted other than as a true test of skill between contestants. This complaint was investigated on direction of our Bureau of Investigation by our New York office, which concluded after investigation that the allegations were unsupported by evidence. The program in question had gone off the air, no other complaints had been received regarding that program or any other programs produced by the parties complained of and the executive producer of the show submitted an affidavit which averred that the producing corporation "has not represented in the past and will not in the future represent that any quiz program which it produces is spontaneous and unrehearsed when such is not the case. * * * has not represented in the past and will not represent in the future that any of the questions used on such quiz programs have been prepared or approved by any person, organization or institution when such is not the case * * * has not represented in the past and will not in the future represent that questions used on such quiz programs have not been seen beforehand by persons not connected with the program who have in fact seen such questions."

In view of the foregoing, on May 6, 1958, in accordance with operating procedures of the Commission, this matter was closed by the Commission's staff.

I would appreciate it if you would insert this letter into the record of hearing immediately following my previous letter of September 3, 1959, as a modification thereof.

Sincerely yours,

EARL W. KINTNER, *Chairman.*

AUGUST 18, 1959.

HON. JOHN C. DOERFER,
*Chairman, Federal Communications Commission,
Washington, D.C.*

DEAR MR. DOERFER: The subcommittee is studying certain television quiz show programs to ascertain, among other things, the adequacy of the Federal Communications Commission and the Federal Trade Commission enabling statutes to prevent a repetition of palming off upon the public of dishonest schemes as honest contests of skill.

These programs we understand on the basis of presently available information may not have actually misrepresented an advertised product. However, they deceived millions of persons into repeated viewing and hearing of advertisements of certain products with resultant tremendous increases in the sales thereof. Meanwhile, equally good competing products whose advertising campaigns were honest suffered sales losses or did not keep up competitively.

In the near future the subcommittee will hold hearings concerning this matter. We should appreciate early advice from you as to the nature and extent of your Commission's jurisdiction over prize contest television programs of the kind described above and over the persons responsible therefor.

Sincerely yours,

OREN HARRIS,
Member of Congress, Chairman.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., September 16, 1959.

HON. OREN HARRIS,
Chairman, Special Subcommittee on Legislative Oversight and Foreign Commerce Committee, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN HARRIS: This is with reference to your letter of August 18, 1959, in which you refer to your proposed inquiry into certain television quiz show programs. In your letter, you indicate that your subcommittee proposes to hold hearings concerning this matter and ask that we advise you "as to the nature and extent of your Commission's jurisdiction over prize contest television programs of the kind described above and over the persons responsible therefor."

As you know, the Commission has not exercised jurisdiction over the various networks as such, nor over individual producing companies except as they are licensees of the Commission. In fact, section 326 of the Communications Act prohibits the Commission from exercising the power of censorship over broadcast material. Accordingly, the Commission has no jurisdiction over "radio and television quiz shows" per se. The Commission has adopted rules consistent with the United States Code governing the broadcast of lottery information, gift enterprises or similar schemes dependent upon chance. (See 18 U.S.C. 1304, also secs. 3.122, 3.292, and 3.656 of the Commission's Rules and Regulations (47 C.F.R. 3.122, 3.292, and 3.656).)

In view of the prohibition contained in section 326 the Commission has not attempted, with the exception of the matters covered by the cited lottery provision of the United States Code, to exercise jurisdiction with respect to specific program content; but, in light of the statutory provision that every broadcast licensee is required to operate in the public interest, the Commission has taken the position that it has the authority and responsibility to consider the overall programming operations of broadcast licensees. In fulfilling its obligation to operate in the public interest, a broadcast station is expected to exercise reasonable care and prudence with respect to its broadcast material in order to assure that no matter is broadcast which will deceive or mislead the public. Accordingly, in considering the overall operations of a licensee, the Commission can and does consider whether the licensee's broadcast facilities have been used for improper purposes such as fraud, deceit or misrepresentation, through the failure of the licensee to exercise the measure of control reasonably to be expected in discharging his responsibility to operate in the public interest.

You are already aware of the investigation conducted into these matters by the New York County grand jury. Furthermore, the Commission has conducted its own inquiries in connection with some of the matters which apparently will be the subject of your hearings. In reply to the Commission's inquiries, CBS and NBC have set forth the precautions which they are taking to prevent a recurrence of questionable programing. In addition, the policies and practices pursued by the networks, among others, in connection with television programing are being considered in the context of the Commission's overall study of the programing functions and activities of the networks. Your committee and the Senate Committee on Interstate and Foreign Commerce have been advised of the Commission's activities. The Commission will be glad to put at your disposal any informational material which will be helpful to your committee.

We trust that this information will be of assistance in this matter.

By direction of the Commission.

JOHN C. DOERFER, *Chairman.*

The CHAIRMAN. I might say for the information of everyone that it is anticipated that these hearings will be concluded this week. That is, every effort will be made, in view of commitments of members of the subcommittee, to conclude them by Friday evening.

I might also say for the information of everyone that there will be some evening sessions during this week. Also for information, I might advise that Mr. Enright of Barry & Enright has requested that the subcommittee hear Mr. Enright and Mr. Freedman in executive session under rule XI of the House rules, and after considering the matter and information which has come to the attention of the subcommittee, the subcommittee will hear these and possibly two or three other witnesses who have made similar requests in executive session.

Of course, following the executive sessions, the subcommittee will determine what part of such testimony will be made public.

It might be observed that rule XI of this particular session of the House rules provides for the protection of innocent persons whose names might be involved.

Our first witness today will be Mr. Herbert Stempel, who was a contestant with "Twenty-one." As part of Mr. Stempel's oral testimony we will have a kinescopic reproduction in this room of an actual "Twenty-one" program in which he participated.

But before we proceed further, Mr. Stempel, will you be sworn?

Do you solemnly swear the testimony you give to this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

TESTIMONY OF HERBERT STEMPEL

Mr. STEMPEL. I do, sir.

The CHAIRMAN. Have a seat, please.

For the record, will you state your name?

Mr. STEMPEL. Herbert M. Stempel.

The CHAIRMAN. Will you give your address?

Mr. STEMPEL. 105-15 66th Road, Forest Hills 75, N.Y.

The CHAIRMAN. Were you one of the contestants in the program referred to as "Twenty-one"?

Mr. STEMPEL. I was, sir.

The CHAIRMAN. At what time?

Mr. STEMPEL. I participated from October 17, 1956, to December 5, 1956.

The CHAIRMAN. Before we show the kinescope program, Mr. Lishman, will you give an explanation as to what is anticipated from the showing of this reproduction?

Mr. LISHMAN. It is anticipated that from a showing of this reproduction the contestant, Mr. Stempel, will indicate the questions concerning which he was furnished assistance in advance of the program. That is the fundamental purpose.

The program, "Twenty-one," was on the air for a period of about 2 years, from the fall of 1956 to the fall of 1958. We are about to watch a kinescopic recording of one of these quiz programs, "Twenty-one."

The game is operated on very simple principles, similar to the card game "Twenty-one." The two contestants are each placed in a soundproof isolation booth where they cannot hear what the other contestant is saying or what is being said to him. One of the contestants in the case of this show, Mr. Stempel, is the champion. This simply means he is the last winner in the show and has yet to be defeated.

The other contestant, in this case Mr. Van Doren, is the challenger and is trying to defeat the champion and become the new champion himself.

The challenger is told in what category questions will be asked. This category can be any subject from the entire range of human knowledge. After being told the category, he is then asked how many points he desires to play for. He may play for anywhere from 1 to 11 points. The higher the number of points he selects to play for, the more difficult will be the question in the announced category.

If he answers the question correctly, he gets the number of points for which he was playing. If not, he remains at zero.

The identical procedure, using the same category, is used for the champion. Following this round, the same thing is done again, only in a different category. If one of the contestants misses the second question but has gotten the first one right, the number of points he was playing for the second time is subtracted from the number of points he achieved on the first question.

After two questions have been asked of each contestant, neither of them knowing whether the other answered successfully or not and therefore not knowing what his opponent's score is, either one has the option of stopping the game.

If the game is stopped at that point by either contestant, then the man with the greatest number of points wins and receives as a prize \$500 for each point differential between himself and his opponent. If neither contestant stops the game, then they continue to be asked questions until one of them has reached the score of 21.

After a contestant has reached 21, his opponent has 1 chance to reach 21 himself. However, he is not told that his opponent has reached 21 points until he himself has selected the number of points he wishes to try for. If he does not make 21, then he loses the game and the money for the point differential. If there is a tie game, the two contestants continue playing except that the value of each point increases by \$500 for every tie. In other words, after one tie, each point is worth \$1,000. After two ties, each point is worth \$1,500. After three ties, each is worth \$2,000, and so forth and so on.

The contestant who finally wins is the champion and can stay on the program and pile up his total of winnings until he is finally defeated.

In the show you are about to watch now, you will see Mr. Van Doren and Mr. Stempel play three tie games, thus raising greatly the value of the points they are playing for. This show was watched on the night of November 28, 1956, by millions of Americans who suspensefully awaited the outcome of the challenge to Mr. Herbert Stempel, who was the then champion on the "Twenty-one" show.

I will now ask that there be shown the kinescopic reproduction of the November 28, 1956, "Twenty-one" quiz program show. At this point I would like permission to have a sound track of the voices made separately and apart and maintained in the files of the sub-committee, and a transcript thereof included in the record of these hearings.

The CHAIRMAN. Without objection, that will be included.

(Showing of kinescopic reproduction.)

(Transcript of the sound track follows:)

BARRY. Good evening GI. I'm Jack Barry. For 6 weeks here on "Twenty-one," a 29-year-old college student, Herbert Stempel, has successfully beaten all of his opponents and has run his winnings up to \$69,500. Hundreds of people from all parts of the country have offered to challenge him. Tonight some of these people will get their chance to do so, and during the next 30 minutes we'll find out whether they can stump Herbert Stempel. So let's meet our first two players as Getitol, America's No. 1 tonic, presents "Twenty-one."

From New York City, Mr. Charles Van Doren, and returning with \$69,500 from Forest Hills, N.Y., Mr. Herbert Stempel.

Welcome back to "Twenty-one," Herb Stempel, and a cordial welcome to you, Mr. Van Doren. Nice to have you both here. Herb, last week after you won your \$69,500 we had hundreds of phone calls and thousands of letters followed during the week when, remember, I asked you a question about where Gothic architecture originated, and you said: "Germany," and I said: "No, you are wrong, that it was France." You were so positive and people had so much confidence in you they said that you were right and they all called in. Actually this time you were wrong and we were right. But you went on anyway to win the game.

STEMPEL. Well, Mr. Barry, I went home last week and I checked my encyclopedia and I found out that Gothic architecture had originated at the Abbey of St. Denis outside of Paris in 1144. Up until then I was sure it was Germany.

BARRY. Well, I am glad at least that this time we were right. Now, Herb, you are faced with that awful decision again; you have \$69,500. You can take it and quit right now and a check will be waiting for you, or you can decide to continue playing. If you go on playing against Mr. Van Doren, and he beats you, whatever he wins will be deducted from the money you have. So, to help you make up your mind, here are some things you should know about Charles Van Doren.

ANNOUNCER. He teaches music at Columbia University and was a student at Cambridge University in England. He has written three books and is currently working on his fourth, and his hobby is playing the piano in chamber music groups.

BARRY. Just out of curiosity, Mr. Van Doren, are you in any way related to Mark Van Doren, up at Columbia University, the famous writer?

VAN DOREN. Yes, I am. He is my father.

BARRY. He is, your father!

VAN DOREN. Yes.

BARRY. The name Van Doren is a very well known name. Are you related to any of the other well-known Van Dorens?

VAN DOREN. Well, Dorothy Van Doren, the novelist and author of the recent "The Country Wife" is my mother, and Carl Van Doren, the biographer of Benjamin Franklin, the historian, was my uncle.

BARRY. Well, you have every reason in the world to be mighty proud of your name and your family, Van Doren. Now, Herb Stempel, you have heard something about Charles Van Doren; you have \$69,500. Do you want to take it and

quit right now, or do you want to risk it by playing against him? What will it be?

STEMPEL. I'll take a chance.

BARRY. You will take a chance? All right, then, on we go. Gentlemen, take your places in the studios. Don't forget to put on your earphones, and good luck to both of you.

[Music.]

BARRY. Neither player in the studios can hear anything until I turn their studios on—which I am going to do right now. Can you hear me, Herb Stempel?

STEMPEL. Yes, I can.

BARRY. Mr. Van Doren?

VAN DOREN. Yes.

BARRY. All right, Herb, I am going to turn your studio off. I'll be back to you in just a moment.

Mr. Van Doren, I think you know how to play this game. You try to get to 21 points as fast as you can. You do it by answering questions which have a point value from 1 to 11. The high point questions are rather difficult; the lower point questions are a little easier. The first category—and we use all of the categories in this program—is "World War II." How much do you think you know about World War II. You can tell me by telling me how many points you want from 1 to 11.

VAN DOREN. World War II. I'll try 9 points.

BARRY. Nine points—and remember we are playing for \$500 a point and the difference in your scores.

For 9 points—Lake Ladoga—L-a-d-o-g-a—played a large part in a particular phase of World War II. Name the two countries whose troops opposed each other at Lake Ladoga.

VAN DOREN. Let's see—I remember the German-Russian line ran from Lake Ladoga to the Black Sea, but Lake Ladoga I guess its in Finland, so would the answer be Finland and Russia?

BARRY. It would be, and you have 9 points.

BARRY. All right, Herb Stempel, you have \$69,500 at stake—the first category is "World War II." How many points do you want?

STEMPEL. I'll try 10.

BARRY. For 10 points—the devastating Japanese attack on Pearl Harbor was only one of a group of attacks on American outposts in the Pacific. On December 7 and 8, 1941, the Philippines and three other islands were attacked. Identify these three islands.

STEMPEL. Guam was the first.

BARRY. That's one.

STEMPEL. Midway was the second.

BARRY. That's two.

STEMPEL. And Wake was the third.

BARRY. You're right—and you have 10 points.

BARRY. Mr. Van Doren, you have 9 points. The second category is "Medicine." How many points do you want?

VAN DOREN. I should take 10 points, but I don't dare to do it. Let me try for 8.

BARRY. Eight points. Here is your question. The necessity for cleanliness and sterilization was not realized until the middle of the 19th century. What is the name of the surgeon who introduced sterilization to the operating room?

VAN DOREN. Joseph Lister.

BARRY. You're right—you now have 17 points.

BARRY. Herb Stempel, you have 10 points, the category is "Medicine." How many do you want to try for?

STEMPEL. I'll try 7.

BARRY. For 7 points—Sir Alexander Fleming and Dr. Selman Waxman are each associated with a famous and potent antibiotic—name these two antibiotics.

STEMPEL. Sir Alexander Fleming is a discoverer of penicillin and Dr. Selman Waxman is a discoverer of streptomycin.

BARRY. You're right—

[NOTE.—Stempel attempted to add something to his statement and Barry was talking at the same time—not clear what was said.]

BARRY. Gentlemen, I caution you not to divulge your scores now—you can hear each other. We are at the end of the second round and neither of you has

reached 21 points. You both get a chance to stop the game right here and now. If either of you stops the game, whoever has the high score at this point will win. Now, I caution you, don't stop the game unless you think you have the high score. You'll win at \$500 a point for the difference in your scores if you do have the high score. Now I am going to turn your studios off, give you some time to think about it, and I'll tell you when your time is up.

BARRY. Ladies and gentlemen—both of our players have 17 points, if either of them stops the game now there will be a tie and we'll have to play a brand new game. Let's see what happens. (Click of studios being turned on.) If either of you want to stop the game, you must tell me so right now.

STEMPEL. I'll stop.

BARRY. Herb Stempel, I have news for you—this time you don't win—you have 17 points—you don't lose; don't get excited. You have 17 points—Mr. Van Doren has 17 points; there is a tie and we are going to have to play another game. All right, now gentlemen, as you know when there is a tie the ante goes up. In the next game we are going to play for \$1,000 a point, which means that if one of you should be lucky enough to win by a score of 21-0, you would win \$21,000; conversely, you could lose \$21,000. I don't want to scare you, of course; this is the maximum amount. So, if you'll just sorta slow down for a second we'll take the 17-point draw, and we'll start the new game in just a moment. All right?

While we are slowing down—I'm telling them to slow down—I'll have to slow down myself—you know this slow down is a word that is very much in vogue right now 'cause a lot of you have been slowing down without even thinking about it, that's cause you don't have much vitality left. This is the season that gives me the chance to talk about a problem that faces so many of you this time of year. Now if you have been slowing down, feeling tired and run down, especially after a cold, flu or a sore throat or a virus, your trouble may be due to what the doctors call iron deficiency anemia—boy, that slows you down; we call it by the simple term of "tired blood." Check with your doctor and to feel stronger fast, I have a wonderful suggestion as always—take Geritol. In just 24 hours Geritol iron is in your bloodstream carrying strength and energy to every single part of your body. Just two tablespoons of the liquid Geritol or two of the Geritol tablets actually do contain twice the iron in a pound of calf's liver—think about it—so, remember if tired blood is your problem—you're feeling rundown and slowed down, especially if you have had a cold, flu, sore throat, or a virus—take either the good-tasting liquid Geritol or the handy Geritol tablet, and will you take them every day, believe me you'll feel stronger and mighty fast, too, within 7 days or you'll get your money back.

[Music and applause.]

BARRY (continuing). Before we go on, I would like to say that all of the questions used on "Twenty-one" have been authenticated for their accuracy and the order of their difficulty by the editorial board of the Encyclopedia Britannica. Gentlemen, are you ready to play the next game? Mr. Van Doren?

VAN DOREN. Yes.

BARRY. Herb?

STEMPEL. Yes.

BARRY. OK, fellows—remember now, for \$1,000 a point, so be very careful now. I am going to turn your studio off, Herb.

Here we go, Mr. Van Doren, in the new game, the first category—"Fashions." How many points do you want?

VAN DOREN. I don't know anything about fashions—can I take 3 points?

BARRY. Yes, you can. Is that what you want to take—3 points?

VAN DOREN. Three points.

BARRY. What synthetic fiber has almost completely replaced silk in women's stockings?

VAN DOREN. I know that much—nylon.

BARRY. Right. Now you have 3 points. That's how it is—if you take the low-point questions you can be pretty sure that they will be relatively simple.

Herb Stempel—your \$69,500 is really at stake now at \$1,000 a point—the category is "Fashions"—how many points do you want to try for?

STEMPEL. Seven.

BARRY. For 7 points—the flapper of the 1920's frequently wore close-fitting helmet-shaped hats, and a little blouse with a sailor collar. What was the hat called, and what was the blouse called?

STEMPEL. The blouse was called a middy blouse.

BARRY. You are right. And the hat?

STEMPEL. I know it was that weird hat that used to start over here and come all the way around here—I just can't remember.

BARRY. Take a guess? No guess?

STEMPEL. No guess.

BARRY. Cloche—c-l-o-c-h-e—or I would have accepted bell. I am sorry you don't score but you don't lose any points because you are at zero and we never put our players below zero. Better luck in the next rounds.

Van Doren, you have 3 points—the category "Founding Fathers."

VAN DOREN. Founding Fathers—well—I'll try 9 points.

BARRY. For 9 points—one of the first American statesmen to protest taxation by the British was a man from Massachusetts who said: "Taxation without representation is tyranny." Name him.

VAN DOREN. It is one of two people—

BARRY. Only takes one—I caution you.

VAN DOREN. It's either Daniel Delaney or James Otis—you say he's from Massachusetts?

BARRY. Yes.

VAN DOREN. I think that Delaney was a Governor. Is it James Otis?

BARRY. It is, and you now have 12 points.

Herb Stempel—you have no points so far. The category is "Founding Fathers." How many points do you want?

STEMPEL. I'll try 11.

BARRY. All the way—the most difficult question—here it is. The final treaty of peace ending the American Revolution was not signed until September 3, 1783. Where was the treaty signed and name three of the four American representatives who attended the conference which led to this treaty?

STEMPEL. I'll take the representatives first.

BARRY. All right.

STEMPEL. One of them was Benjamin Franklin.

BARRY. That's one.

STEMPEL. John Jay.

BERRY. Two.

STEMPEL. And John Adams.

BARRY. Three. You've got that part.

STEMPEL. Now you want to know where the treaty was signed?

BARRY. Yes.

STEMPEL. Although it was called the Treaty of Paris, it was actually signed as Versailles.

BARRY. You're right—you now have 11 points.

Gentlemen, we are at the end of the second round. Neither of you has scored, neither of you has scored 21 points. I am going to give you a little time now to think over whether you want to stop, and if either of you stop now whoever has the high score will be the winner at \$1,000 a point, so think it over very carefully and I'll tell you when your time is up.

BARRY (to audience). If either player stops the game now, Mr. Van Doren, who is one point ahead will win \$1,000, and he will be the new champion, but they don't know the other's score—let's see what happens—

[Click of studios being turned on.]

If either of you want to stop the game, you must tell me so right now. No—neither of you—all right, we are going to continue on to 21 without interruption, but I think both of you deserve a little bit of rest right here before we continue. While you are taking this little bit of rest, I want to take a couple of moments out here to give my good friend Bob Sheppard a chance to talk to you for a moment for any of you who are suffering from common rheumatic and arthritic-like pains. Bob—

SHEPPARD. Thank you very much, Jack, and it's quite a moment to. Now friends—an important new advance has been made in the relief of common rheumatic and arthritic-like pain, due to stiff, aching joints—its Zarumin. If common rheumatic and arthritic-like pains make it difficult to knit, walk, or move about—try Zarumin. Now Zarumin must give you more freedom from these annoying pains or your money back. Now this is a Zarumin pill, and it offers this new advance. It is actually a pill within a pill. And here is a model of the pill. As you can see—Zarumin contains an outer pill that gives fast, effective temporary relief—and an inner pill that brings more relief hours later, thus giving longer lasting relief. The result—once again you are able to do the things that pain may have been preventing. Take Zarumin as di-

rected—if pain persists—see your doctor. That's Zarumin at your drugstore now.

BARRY. All right—thanks for that announcement, Bob. Talking about announcements—Jimmy Durante is going to be on the Walter Winchell show this Friday night—it will be a barrel of laughs—the Walter Winchell show Friday night with Jimmy Durante. Now we are going to get on here with "Twenty-one"—we are going to go right on to 21, Herb, and we'll turn your studio off—you OK? All right.

Mr. Van Doren, you have 12 points, the category is "Churchill." How many points do you want?

VAN DOREN. Winston Churchill?

BARRY. Let me look and see myself. I assume it is all about Winston Churchill. Yes, they are.

VAN DOREN. I'll go all the way, Mr. Barry. I'll try 9 points.

BARRY. You want to try for 9 points?

VAN DOREN. Yes.

BARRY. If you answer correctly you will have the required 21 points, but you'll still have to wait until Herb Stempel gets his chance to answer. Because we are at a crucial moment, I am going to give you some extra time to think about it if you want it. Now let me ask you again—you wanted 9 points—right?

VAN DOREN. That's right.

BARRY. Here is your question. Winston Churchill wrote a series of six brilliant books chronicling the events leading up to and including World War II. I want you to name any three of them. Would you like to think about it?

VAN DOREN. Yes—please.

BARRY. I'll tell you when your time is up.

VAN DOREN. All right.

BARRY. Your time is up—for your 9 points, which would give you 21, name any three of the six brilliant books I mentioned a moment ago.

VAN DOREN. One of them, I think the first one, is "The Gathering Storm."

BARRY. That is one of them.

VAN DOREN. Now, another one is "The Grand Alliance."

BARRY. That's two. You need one more to give you 21 points.

VAN DOREN (Aside). I've seen the ad for those books a thousand times. I can't have any more time, huh?

"Triumph and Tragedy."

BARRY. That's right—and you have 21. Now, Mr. Van Doren, you have 21 points which is what you needed, but, of course, Herb Stempel still has one chance to answer—we'll see what happens. I'm going to allow you to listen in because you've got 21, but please do not say anything. OK?

Herb Stempel, you have 11 points. The category is "Churchill." How many points do you want to try for?

STEMPEL. I'll try 10.

BARRY. Which would give you 21. I can tell you now that your opponent has already scored 21. If you answer this question correctly there will be another tie and we'll have to play another game. If you miss—you'll be back to one. There will be a difference of 20 points in your score. At \$1,000 a point you'll lose \$20,000. Take your time on this and if you need extra time please take it.

Prior to his election to Parliament in 1900, Winston Churchill was with the British Army in three foreign countries. Name them. Do you want to think about it? I'll tell you when your time is up.

Your time is up—with your 10 points which give you 21 or if you miss back down to 1—name the countries—the three foreign countries.

STEMPEL. South Africa in the Boer War.

BARRY. That's one.

STEMPEL. India.

BARRY. Is two. You need one more.

STEMPEL. Sudan.

BARRY. You're right—we have another tie at 21. Congratulations to both of you. We have the second tie which means that we have to play another game. This time we are going to play for \$1,500 a point, which means that if one of you should win by a score of 21 to nothing, one of you could win over \$30,000, and one of you could lose over \$30,000, too. So if you're all set to play. Herb? Mr. Van Doren? All right on we go—I'm going to turn your studio off the air—remember boy, you have a lot at stake.

Mr. Van Doren, the first category at \$1,500 a point—Queens. How many points do you want?

VAN DOREN. You mean mythical queens or real queens?

BARRY. Oh, boy. I'll have to look. I think these were real queens; yes.

VAN DOREN. Eleven. I'll go for 11 points.

BARRY. All the way—the most difficult question. Here it is. The wife of King Ahab was a cruel and willful woman; she favored the idolatrous worship of Baal and persecuted the prophets of Jehovah. What was her name, and what country did she rule? Do you want time to think it over?

VAN DOREN. No.

BARRY. No, when the scores are 21 I am not permitted to give you the time—you'll just have to answer.

VAN DOREN. You say, the wife of Ahab?

BARRY. Yes.

VAN DOREN. I was afraid of that. My father would know that. I guess I'll have to guess. The only person I can think of that it could be would be Jezebel.

BARRY. You are right, and one more part, What country did she rule? and I'll have to ask you to answer a little more quickly this time.

VAN DOREN. That must be Palestine.

BARRY. It was, and you have 11 points.

BARRY. Herb Stempel, the category is Queens. We're playing for \$1,500 a point. Be careful; how many points do you want?

STEMPEL. I'll try 10.

BARRY. For 10 points—Placed on the throne unwillingly, this girl ruled England for 9 days before she was imprisoned and killed by the government of the Queen who succeeded her. What was her name, and who was the Queen who followed her to the throne?

STEMPEL. Her name was Lady Jane Gray.

BARRY. Right.

STEMPEL. And she was killed or—

BARRY. Who was the Queen who followed her to the throne?

STEMPEL. And she was succeeded by Mary Tudor.

BARRY. Queen Mary. You are right, that gets you 10 points.

Mr. Van Doren, you have 11 points; the category is "Opera." Opera. How many do you want to try for?

VAN DOREN. Well, I'll go to 21.

BARRY. A 10-point question. All right; because you are trying for 21 you can have some extra time if you need. Here is your question: I want you to listen to this aria—Listen to it first [aria played].

All right. Now tell me first the name of the aria; second, the name of the opera; and, third, who wrote it? Do you need some time to think it over?

VAN DOREN. Yes; please.

BARRY. All right, I'll tell you when your time is up.

(After a pause.)

BARRY. Your time is up. For 10 points, which would give you 21, tell me first the name of the aria.

VAN DOREN. Could I start with the name of the opera?

BARRY. Sure; the name of the opera.

VAN DOREN. It is "Rigoletto."

BARRY. Right. The composer?

VAN DOREN. Guiseppe Verdi.

BARRY. Verdi is right. Now, for 21 points, the name of the aria.

Would you like to hear it again?

VAN DOREN. No; I just can't think of the name.

"Cara Nome."

BARRY. You are right, and you have 21 points. Once again you have 21, but you still have to give Herb Stempel his chance to answer. I'm going to let you listen, but please don't speak. Herb Stempel, you have 10 points, the category is "Opera." How many points do you want to try for?

STEMPEL. Eleven.

BARRY. You want to go for 21. I can tell you now your opponent already has—and the same thing happened before—your opponent has 21 points. If you answer correctly you'll have 21 points and there'll be another tie and we will have to go to another game. If you should miss you'll be back down to zero. Your opponent, at 21 points with \$1,500 a point, will win somewhere in the neighborhood of \$32,000, which will be deducted from your \$69,500. So be very

careful. Here is the question and you can have some extra time if you need it. I want you first to listen to this aria. Listen to this [aria played].

Now, I want you to tell me first the name of the aria; second, the name of the opera; third, who wrote it; and fourth, the name of the character in the opera who sings it. Do you need some extra time to think about this? I'll tell you when your time is up.

For your 11-point question, which could either make or break you on this, Herb Stempel, first give me the name of the aria—

STEMPEL. I'd like to try the name of the opera first.

BARRY. Right. Give me the name of the opera.

STEMPEL. The name of the opera is "Rigoletto."

BARRY. Right. The name of the composer?

STEMPEL. Guiseppe Verdi.

BARRY. Right. The name of the character?

STEMPEL. Am I permitted to hear the song again, please?

BARRY. Yes. I think we can play the song once again for you. May we hear the aria again? [Aria played.]

All right, Herb, you have to tell me two more things—the name of the character and the name of the aria.

STEMPEL. "Cara Nome" is the name of the aria.

BARRY. You're right. You need one more, the name of the character, which would give you 21 points and we'd have another tie.

STEMPEL. Sung by a girl, Gilda.

BARRY. You're right. You've got 21 points. Gentlemen, I am going to ask both of you to come out. Herb Stempel, will you come out? Mr. Van Doren, come on out here; we've got another tie. Gentlemen, this is terrific. We've played three games. Can you both come back next week? Can you come back, Herb?

STEMPEL. Yes.

BARRY. Can you come back?

VAN DOREN. Yes.

BARRY. When you come back you'll be playing for \$2,000 a point, which means that one of you could win up to \$42,000 or you could lose \$42,000. So, we'll see you next week here on "Twenty-one." Good night, Herb Stempel. Good night, Charles Van Doren. Congratulations. Don't have time for the commercial; no time. See you next week. Good night, everybody, good night.

ANNOUNCEMENT. If you often can't sleep, your nerves on edge, try this new sleeping tablet, Somnux, that contains not just one, but three medical ingredients all working together like a doctor's prescription to help bring safe natural-like sleep. Taken as directed Somnux brings 100 percent safe sleep, helps calm down jittery nerves. Somnux contains no narcotics—nonhabit forming. Get Somnux. Take as directed for 100 percent safe sleep.

Geritol, America's No. 1 tonic. Geritol, the fast-acting high potency tonic that helps you feel stronger fast has presented "Twenty-one."

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISMAN. Mr. Stempel, does the kinescopic showing of the television quiz show, "Twenty-one," on November 28, 1956, which you have just seen, accurately reproduce the questions and the answers that were given to and by you at that time?

Mr. STEMPEL. It does, Mr. Lishman.

Mr. LISMAN. Does the showing also accurately reproduce the mannerisms and the acting gestures which were used by you?

Mr. STEMPEL. Yes, sir.

Mr. LISMAN. Does it reproduce the perspiration coming off your brow when you were attempting to answer what were theoretically most extremely difficult questions?

Mr. STEMPEL. It does, sir.

The CHAIRMAN. Mr. Stempel, did that reflect the condition within the booth that made you apparently so warm?

Mr. STEMPEL. Yes, sir. They have an air conditioning system in there and when I asked them to turn it on they gave some sort of

excuse that it would make too much noise and refused to turn it on, thereby causing me to perspire profusely.

The CHAIRMAN. They do have air conditioning in the booths that they can turn on or off as they desire?

Mr. STEMPEL. Yes, sir. But at all times they refused to turn it on, claiming it made too much noise and interfered with the reproduction of the program.

The CHAIRMAN. Being in such a closed place without any air at all, you would naturally perspire quite extensively?

Mr. STEMPEL. Yes, sir.

Considering that they have very, very hot lights and all the Kleig lights and so forth which are used and the television cameras and so forth which have to use very strong lights. One would perspire.

Mr. LISHMAN. Now, Mr. Stempel, prior to your appearance on the show you have just seen, were you given by the producers of that show all the questions and all the answers to those questions which you were about to be asked on the show itself?

Mr. STEMPEL. I was, sir.

Mr. LISHMAN. Were you told which questions to answer correctly and which questions you should miss?

Mr. STEMPEL. I was, sir.

Mr. LISHMAN. Were you told how many points you should try for in every category?

Mr. STEMPEL. Yes, sir.

Mr. LISHMAN. In the first two games that you played with Mr. Van Doren on this show, were you told in advance that you would tie with Mr. Van Doren and precisely what the score would be?

Mr. STEMPEL. Yes, sir. In the first game I was told I would tie 17 to 17, and in the second game there would be a 21-21 tie.

Mr. LISHMAN. Mr. Stempel, did you rehearse the questions and answers, the length of time you should take to answer, the types of gesture you should employ while answering the question with Mr. Daniel Enright, producer of this show, prior to your appearance on the show?

Mr. STEMPEL. I did, sir.

Mr. LISHMAN. Now, Mr. Stempel, could you tell the subcommittee—and start from the beginning—and state just how you came to be a contestant on this "Twenty-one" quiz program?

Mr. STEMPEL. Yes, sir. The show made its debut some time, I believe, about September 1956, and my wife and I were sitting in our apartment watching it. The questions did not appear overly difficult at the time. Therefore, I said to my wife that I would write a letter requesting that I be given an interview in order to try out for a contestant for this particular show.

Mr. LISHMAN. Mr. Stempel, did you write a letter to the producers of this show under date of September 27, 1956, and request to become a contestant?

Mr. STEMPEL. I did, sir.

Mr. LISHMAN. I hand you a paper and ask you to identify it.

Mr. STEMPEL. This is my handwriting. This is the date, and this is the letter which I originally sent in, sir.

Mr. LISHMAN. Will you kindly read this letter in its entirety?

Mr. STEMPEL. Yes, sir. It says:

SEPTEMBER 27, 1956.

DEAR SIR: I would like to apply as a contestant—

Mr. LISHMAN. Excuse me just a minute. To whom was this letter addressed?

Mr. STEMPEL. It was addressed, as far as I remember, just to Barry & Enright, Inc., 667 Madison Avenue, New York, N.Y. It says:

DEAR SIR: I would like to apply as a contestant on your program "Twenty-one" which I watch and enjoy every week. I am married and have a 14-month-old son. I am a veteran of 8 years of Army service, part of which was spent with Army Criminal Investigation, and have been stationed in many parts of the world. I am aged 29 and am at present a senior at the City College of New York. Doctors have told me and many of my friends say that I have a very retentive, if not photographic memory, and I have thousands of odd and obscure facts and many facets of general information at my fingertips. I have sat home continuously watching many television shows and I answer the so great bulk of the questions that my wife has continually urged me to try out for your fine show. If not "Twenty-one," I would like an opportunity to appear on "Tic-Tac-Dough," on which I am confident I could also do well. Thanking you for any consideration which you give me in this matter, I remain,

Very sincerely,

HERBERT M. STEMPEL,
105-15 66th Road, Flushing, N.Y.

Mr. LISHMAN. Now, Mr. Stempel, how was that letter answered?

Mr. STEMPEL. I received a communication a few days later from the offices of Barry & Enright, requesting that I come down for an interview, and when I arrived for an interview I was immediately—I went to the receptionist and the receptionist directed me to Miss Gloria Anne Rader who handed me a test form consisting of about 363 questions and thereupon I was ushered into a room and asked to start answering these questions. This was a test which took approximately 3½ hours.

Mr. LISHMAN. How did you make out on that test?

Mr. STEMPEL. As I was informed, I was the highest scoring contestant or the highest scorer who ever has participated in taking this examination. I received 112 wrong out of 363.

Mr. LISHMAN. Mr. Stempel, after taking this 3½-hour test, did you meet Mr. Dan Enright?

Mr. STEMPEL. Yes, sir. The next afternoon I was told by this Miss Rader to go home and I would be contacted in about 1 week. I went home and next afternoon received a phone call from a Mr. Howard Merrill, who I believe at that time was the producer of the show. He told me that it was of utmost urgency that I come down to the offices of Barry & Enright that afternoon. Whereupon when I got there I was told to go to Mr. Merrill, who thereupon ushered me into the office of Mr. Enright.

Mr. LISHMAN. When you first met Mr. Enright, did he ask you certain questions?

Mr. STEMPEL. He did, sir.

Mr. LISHMAN. Do you remember what those questions were?

Mr. STEMPEL. Yes, sir. He wanted to know the capital, as I remember, of Nepal. He also wanted to know the various types of fingerprint classifications, and then Jack Barry, or Mr. Barry, who happened to be standing in the room, asked me what the width of a football field goal post was. There were several odd and assorted other

people in the room, namely, the public relations individuals and several assistant producers, et cetera.

Mr. LISHMAN. Do you recall the names of any of those individuals who were present with you and Mr. Enright when he asked these questions?

Mr. STEMPEL. I do. As far as I remember, there was a Robert Noah present. I believe there was a Mr. Art Franklin, who was at that time the public relations man for Barry & Enright. If I am not mistaken, if my memory serves me correctly, there was a Mr. Al Davis, also a public relations man, present at this interview, besides Mr. Barry.

Mr. LISHMAN. Now, Mr. Stempel, following the conclusion of that interview with Mr. Enright, when was the next time that you saw him?

Mr. STEMPEL. I spoke to him about 2 hours, sir, and he asked me about various facets of my background, probing into my past, et cetera. I was told to go home and I would be further notified. The next Tuesday evening about 8 p.m. I was babysitting—

Mr. LISHMAN. Just a minute. This was a Tuesday evening. Was that sometime in October 1956?

Mr. STEMPEL. Yes, sir. This was approximately October 16, as my memory serves me.

Mr. LISHMAN. Why do you fix that date?

Mr. STEMPEL. Because I went on the program the next evening.

Mr. LISHMAN. You went on the program on October 17, 1956, for the first time?

Mr. STEMPEL. Yes, sir.

Mr. LISHMAN. On the "Twenty-one" program?

Mr. STEMPEL. That is correct, sir.

Mr. LISHMAN. Continue.

Mr. STEMPEL. I received a call from a gentleman who identified himself as Mr. Daniel Enright and said that he had to see me in his office upon a very urgent matter. I thereupon told him that my wife had gone to the theater and I was babysitting that evening. He said he had to see me desperately and he would come out. He asked me for directions how to get to my home. I instructed him as to how he would get to my home. He came out about a half hour later. I recognized him from having met him before. At that time when he entered my house he was carrying an attaché case. He walked into my home. I offered him a seat, asked him if he wanted a drink and he refused it. Without further ado, he opened up the attaché case while sitting on my couch, pulled out a bunch of square cards, such as were eventually used as category cards on "Twenty-one," and proceeded to say the category is blank-blank, whatever it happened to be, and then would ask me questions sequentially from 1 to 11.

Mr. LISHMAN. In other words, he was giving you a rehearsal or a dry run of the format of the "Twenty-one" program?

Mr. STEMPEL. Yes, sir; he was. I managed to answer the bulk of the questions and those which I did not know, he helped me on, and supplied the answers. After having done this, he very, very bluntly sat back and said with a smile, "How would you like to win \$25,000?" I said to him, I was sort of taken aback, and I said, "Who wouldn't?"

Mr. LISHMAN. May I interrupt you there. At the time you made your application to appear as a contestant, did you believe that that show was fixed?

Mr. STEMPEL. I did not, sir.

Mr. LISHMAN. Had you witnessed performances of that show?

Mr. STEMPEL. I made the application to the best of my knowledge on the first performance of the show. I believe I watched the premier, as a matter of fact.

Mr. LISHMAN. You honestly believed that it represented a contest of knowledge?

Mr. STEMPEL. Yes, sir.

Mr. LISHMAN. Now, continue with your second meeting, at your home, with Mr. Enright.

Mr. STEMPEL. Yes, sir. I said; "Who wouldn't?" He said something to the equivalent, "Play ball with me, kid, and you will do it," or words to that effect. Then he explained to me that I had been selected to go on the air as a contestant that very next evening. He was rehearsing me. The questions I would take were the nine and the nine, as I remember, in a certain category. I would end up at 18 points. Whereupon I would stop the game. Then we talked for a while about things I don't remember. Then he asked me, incidentally, where my wardrobe was, and I told him. He went and checked all my suits and selected a blue double breasted ill-fitting suit which had belonged to my deceased father-in-law, which I was intending to give to charity. Then he asked to look at my shirts. I went to the chest which I have and showed him my shirts. He said essentially that a blue shirt would be worn for television, whereupon he picked out a frayed collar blue shirt. He also instructed me to wear a wristwatch which ticked away like an alarm clock. It was a very cheap \$6 wristwatch. He also instructed me that I had to get what is known, as I understand it, a marine type white-wall haircut. This was the way I had to dress up.

He told me also that I was to report to his office at 1:30 the following afternoon, which I did.

Mr. LISHMAN. Mr. Stempel, may I interrupt? While all this procedure was going on with Mr. Enright advising you as to your wardrobe, haircut, wristwatch and so on, what were you doing? What were your emotions as this was going on?

Mr. STEMPEL. I had been a poor boy all my life, and I was sort of overjoyed, and I took it for granted this was the way things were run on these programs. At first I had not realized when I first applied but then I was sort of taken aback. I was stunned. I didn't know what to say, Mr. Lishman.

Mr. LISHMAN. Did you tell Mr. Enright you would not do it?

Mr. STEMPEL. No, sir. I told him I would do it.

Mr. LISHMAN. You told him you would?

Mr. STEMPEL. Yes, sir.

Mr. LISHMAN. Then how did this meeting conclude?

Mr. STEMPEL. It concluded when my wife walked in. I introduced Mr. Enright. My wife remarked, after his having left, that he was a "pretty sharp dresser." I told her exactly what the setup was in this particular thing. I was happy that I would have a chance to make a little bit of money.

Mr. LISHMAN. On that particular evening in your apartment in Forest Hills, when Mr. Enright was there, did he give you any categories and answers that were used on the following evening's program in which you appeared?

Mr. STEMPEL. Yes, sir. As I remarked before, I don't remember the exact questions, but I know, as I remember it, it was a 9, and 9, and I was told to stop at 18. That was exactly the way I played the game. I reported to his office as instructed the next afternoon at 1:30.

Mr. LISHMAN. At your apartment, do you remember about how many categories of questions which later appeared on the show were gone over with you by Mr. Enright?

Mr. STEMPEL. He covered quite a few categories, sir. I don't remember the exact number, but it may have been 10 or 12 or 14. There were quite a few questions asked that evening. Later on he simplified the procedure.

Mr. LISHMAN. At that meeting did Mr. Enright tell you what categories to select when you appeared on the show as a contestant?

Mr. STEMPEL. He did, sir.

Mr. LISHMAN. And he gave you the answers to the questions that would be asked under that category?

Mr. STEMPEL. He did, sir.

Mr. LISHMAN. With reference to the wardrobe situation, did he ask you to wear that ill-fitting suit and to appear with the haircut and the wristwatch at the show so that you would be televised in that condition?

Mr. STEMPEL. Yes, sir, he did. He told me that it was essential that I wear this particular get-up.

Mr. LISHMAN. Did you do that?

Mr. STEMPEL. Yes, sir, I did, and for 6 weeks continuing.

Mr. LISHMAN. The next day prior to the show in the evening, did you have another meeting with the producers?

Mr. STEMPEL. I did, sir. About approximately 1:30 in the afternoon at the offices of Barry & Enright, in Mr. Enright's office.

Mr. LISHMAN. Can you tell us who was present at this meeting prior to the performance on the 17th?

Mr. STEMPEL. Only Mr. Enright. As a matter of fact, if there were anybody else in the office, they subsequently got up and walked out of the office. In fact, all my transactions with Mr. Enright were done in private.

Mr. LISHMAN. Did you ever have any transactions with Mr. Barry?

Mr. STEMPEL. Never. As a matter of fact, there was one particular incident which I do remember in which I was rehearsing questions with Mr. Enright, and we had several category cards out. Mr. Barry happened to poke his head in the door, and Mr. Enright shoved the cards into the drawer. I looked at him very, very bluntly and I said, "Dan, doesn't Jack know about this," or Mr. Barry. He said, "Mind your own business and pay attention to your lessons," or words to that effect.

Mr. LISHMAN. Now, Mr. Stempel, at this meeting with Mr. Enright prior to the showing on the 17th, did Mr. Enright again give you the categories and answers to questions which would be asked you in the evening?

Mr. STEMPEL. Yes, sir. In fact, this was more specific in that I was told to write this down on a piece of paper.

Mr. LISHMAN. Were you told to write it down on a piece of paper?

Mr. STEMPEL. Yes. He also told me at this time exactly how the questions were to be answered. In other words, I was to write down

something like "Take 5 seconds pause, stutter, say nine points." In other words, everything was explicit. He showed me how to bite my lip to show extreme tension. How to mop my brow. He told me specifically not to smear my brow, but rather to pat for optimum effect, as that created a more tense atmosphere. He told me how to breathe heavily into the microphone and sigh, such as this [witness sighs]. He taught me how to stutter and say in a very plaintive voice, "I will take nine, nine points." He also told me never to call Mr. Barry, Jack, but be very diffident, and call him Mr. Barry. That is the only way I was ever supposed to address him on television, whereas all the other contestants addressed him as Jack. As a matter of fact, I might say, apropos of this whole thing, that this was the hardest part of the show. Remembering the questions was quite easy, but the actual stage directions were the most difficult things because everything had to be done exactly. Woe betide you if you did not do it as had been planned by Mr. Enright.

Mr. LISHMAN. Now, Mr. Stempel, do you recall your playing the games on the 21 program on the evening of October 17?

Mr. STEMPEL. I do, sir. I reported to Studio 6-B, and I was made up and I stood by. There was a particular dressing room that was assigned to me. After having been made up, Mr. Enright came around to check on me, make sure I had all the stage directions and all the other things down pat. The number of points to play and so forth. I was also introduced to my first opponent which really was not according to the way the studio setup was supposed to have been done. This was a gentleman, a CPA as I remember, by the name of Maurice Pelubet. I waited approximately 20 minutes that evening when two other contestants played to a zero-zero tie after having gone five rounds. They suddenly evoked a new rule in the game whereby they said after five rounds, if contestants had gone to zero-zero, they would cancel the game, and the game would be finished and they would go off the air. They gave them a hundred dollars consolation prize. Finally I got on against Mr. Pelubet. I played the game as instructed, took my 9-9, found out I won 18 to nothing and \$9,000 in 3 or 4 minutes.

Mr. LISHMAN. How many weeks were you on this program?

Mr. STEMPEL. Eight weeks, sir.

Mr. LISHMAN. Did Mr. Enright furnish you with assistance with respect to the questions that were asked you on each of these eight times?

Mr. STEMPEL. Yes, sir. Every single time we would have a meeting on Tuesday afternoon at approximately 1:30.

Mr. LISHMAN. What day did the program appear?

Mr. STEMPEL. At that time Wednesday evening at 10:30 p.m.

Mr. LISHMAN. Your meetings with Mr. Enright were on the preceding Tuesday?

Mr. STEMPEL. On Tuesday, sir, to get the instructions and then on Wednesday to make a sort of dress rehearsal to make sure that everything was done correctly.

Mr. LISHMAN. Did you ever have any dealings with Mr. Freedman?

Mr. STEMPEL. Just as a matter of receiving continuity cards from him. He was the man who furnished me the dialog cards, this repartee which was supposed to have been spontaneous. Aside from that, no other dealings; just to say hello, and so forth. That is all.

Mr. LISHMAN. In rehearsing in advance for these programs, were these rehearsals conducted in the same routine manner each time?

Mr. STEMPEL. Yes, sir.

Mr. LISHMAN. Or on any occasion was there something unusual which happened that you could now remember?

Mr. STEMPEL. After about the sixth week or so, I decided that I was getting tired of wearing the same old suit. I put on a new single-breasted suit and a new watch and allowed my hair to grow a different way. Whereupon Mr. Enright, it was either the seventh or eighth week, made some remark about "You are not paying attention to your lessons, you are not cooperating," or words to that effect. In other words, I was not playing the game. There was one time when my wife came down dressed in a Persian lamb coat and she was very brusksly hustled out of the theater because she was not supposed to be seen.

Mr. LISHMAN. Mr. Stempel, who was present at these regular rehearsal meetings that you had with Mr. Enright besides yourself?

Mr. STEMPEL. Always Mr. Enright. He operated alone every time. There was never anybody else present, sir.

Mr. LISHMAN. Was it explained to you that the producers were trying to build up in the public mind a certain image projection?

Mr. STEMPEL. Yes. I was supposed to be a penniless ex-GI, sort of working my way through college.

Mr. LISHMAN. What are the facts about this, and what happened as a result of this projection of your image?

Mr. STEMPEL. I don't quite understand your question, sir.

Mr. LISHMAN. As I understand it, you were supposed to be projected as a penniless ex-GI struggling to get an education, and that the winnings that you were going to get here were for that purpose.

Mr. STEMPEL. Yes, sir. As a matter of fact, after I went off the program the continuity writer made a speech, such as, "I am going to buy some clothing for my wife," and so on and so forth.

Mr. LISHMAN. What happened as a result of that?

Mr. STEMPEL. I don't quite understand the question.

Mr. LISHMAN. Did you have any public reaction to these statements?

Mr. STEMPEL. Somehow or other there appeared an article in Leonard Lyons' column that in reality my wife was the daughter of quite a wealthy person, and this sort of evoked a lot of anger on the part of Mr. Enright because he was wondering how this information got out.

Mr. LISHMAN. Is it true?

Mr. STEMPEL. Yes, it is, sir.

The CHAIRMAN. Were you in school?

Mr. STEMPEL. Yes, sir; I was a senior at the City College of New York.

The CHAIRMAN. Were you using this to obtain financial resources for your educational program?

Mr. STEMPEL. This is a municipal college, sir. Mainly I was using this to obtain a sort of financial independence from my in-laws.

The CHAIRMAN. For your in-laws?

Mr. STEMPEL. From my in-laws, sir.

The CHAIRMAN. A commendable trait, I should say.

Mr. LISHMAN. Mr. Stempel, in the instructions you were receiving from Mr. Enright, were you told that ties in the game were important

in order to build up, let us say, tension and more attentive public interest in the program?

Mr. STEMPEL. Yes, sir. Also that Mr. Enright explained to me that he received approximately \$10,000 a week—in fact, I think the figure quoted was \$1,000 a week—from Pharmaceuticals, Inc., as prize money, and that he had to arrange the games in such a way as to not go over the budget, because any moneys which were expended over \$10,000 weekly came out of his pocket, and if he could keep the budget down, he made a little gravy, to use the phrase.

Mr. LISHMAN. Mr. Stempel, did you sign any agreement respecting your winnings on this program?

Mr. STEMPEL. I did, sir.

Mr. LISHMAN. Do you remember what that agreement contained?

Mr. STEMPEL. I remember it just about verbatim, sir.

Mr. LISHMAN. About what time did you sign such an agreement?

Mr. STEMPEL. About the fifth week of my winnings, sir.

Mr. LISHMAN. Do you remember what was contained in that agreement?

Mr. STEMPEL. Yes, sir. This was a paper that was thrust upon me which was allegedly initiated on my part which just about verbatim said the following. This was addressed to Mr. Enright and said as follows:

“DEAR SIR: In order to protect my winnings, I hereby agree to the following settlement. On sums between \$40,000 and \$60,000, I will take \$40,000. On sums between \$60,000 and \$80,000, I will take \$50,000. On sums between \$80,000 and \$100,000, I will take \$60,000.” I believe in sums over \$100,000 I will take \$60,000 also, with the proviso that you make good to me all sums up to \$40,000.

This was supposed to have been signed by me. It was put very bluntly to me that if I did not sign, I would suddenly find myself a loser.

Mr. LISHMAN. Was the tenor of this agreement and its provisions, let us say, if you won \$100,000 ostensibly, in reality you would only get approximately \$60,000?

Mr. STEMPEL. Yes, sir. As a matter of fact, this letter was not witnessed nor notarized by anybody. It was an agreement between Mr. Enright and myself.

Mr. LISHMAN. Do you have a copy of that agreement?

Mr. STEMPEL. No, sir. It was a one copy agreement which suddenly conveniently disappeared.

Mr. LISHMAN. You signed it and returned it to Mr. Enright?

Mr. STEMPEL. I did, sir. It was neither witnessed nor notarized, as I stated before.

Mr. LISHMAN. What date did you leave the program?

Mr. STEMPEL. I left the program on December 5, 1956.

Mr. LISHMAN. Do you remember that preceding your loss you had a meeting with Mr. Enright?

Mr. STEMPEL. Yes, sir.

Mr. LISHMAN. What happened at that meeting?

Mr. STEMPEL. Is this the day I lost, sir? Is that what you are talking about?

Mr. LISHMAN. When you were told that you would lose. Let us fix the date when you were told you would lose.

Mr. STEMPEL. This would be on the 4th of December 1956. This was the day before. The usual Tuesday meeting. I arrived at Mr. Enright's office, and suddenly on the couch in his office found an enormous pile of records which he very, very bluntly told me were mementos from the program of all the programs I had been on. In other words, all recordings of all the programs. After his assistants had left, I was told very bluntly, as he walked over to the blackboard, that I had done very well for the show, reached a certain plateau, and he drew a chalk mark, sort of going up the blackboard and then leveled it off, but said, "Now we find we are sort of at a plateau. We have to find a new champion. That is why you are going to have to go." Then he outlined the program for the evening, telling me I would miss on a question pertaining to what picture won the Academy Award in 1955, and the answer was "Marty," a picture I had seen three times, and I was also in the last question told to miss the last part of a three-part question dealing with the topic I had discussed in American history course 2 days before.

Mr. LISHMAN. Was there a reason advanced to you as to why you should miss these apparently simple and easy questions?

Mr. STEMPEL. This was supposed to be the twist of the "Twenty-one" program. In other words, the omniscient genius was supposed to know all the hard answers, but miss on the easy ones, because the public would figure one of two things. Either in his very, very erudite studies he had either glossed over this and missed it, or it was intended as a sop to the public at large to make them say, "See, I knew the answer to this and the great genius, so and so, didn't." That is about the effect of it.

Mr. LISHMAN. Were you told to whom to lose?

Mr. STEMPEL. Yes, sir.

Mr. LISHMAN. Who.

Mr. STEMPEL. Charles Van Doren, sir.

Mr. LISHMAN. Did you lose as you were scheduled to lose?

Mr. STEMPEL. Yes, sir. I lost by the score of 18 to 10 in the fifth game of our series when we played. It was two games after the kinescope that we saw.

Mr. LISHMAN. How much did you receive in total as your winnings?

Mr. STEMPEL. \$49,500, sir.

Mr. LISHMAN. This was more than the agreement called for?

Mr. STEMPEL. Yes, sir. He told me he was giving me a bonus, as he put it, because of my great histrionics.

Mr. LISHMAN. During the time you were on the program did there come a time when you received an advance?

Mr. STEMPEL. Yes, sir. There was a time. I don't remember the exact date. When I could have conceivably, according to the rules of the game, lost every single penny which I had, and Mr. Enright advanced me \$18,500.

Mr. LISHMAN. How much?

Mr. STEMPEL. \$18,500.

Mr. LISHMAN. Do you recall what your winnings were at that time?

Mr. STEMPEL. I believe it may have been \$6. I am not positive, sir. It may have been \$50, \$69. I am not positive, \$50, \$69.

Mr. LISHMAN. I will show you some papers and ask you if they refresh your recollection on the testimony you have just given?

Mr. STEMPEL. Yes, sir. These are two checks that I received, one on the 17th of November for \$8,500.

Mr. LISHMAN. The 17th of November of what year?

Mr. STEMPEL. 1956, for \$8,500. This was an advance.

Mr. LISHMAN. Drawn by whom?

Mr. STEMPEL. Drawn on DOJO, Inc., which is the incorporated name for "Twenty-one," and signed by Daniel Enright, and made out to me. The other is an advance on the 29th of November 1956, for \$10,000. Also drawn on DOJO, Inc., the corporate name for "Twenty-one," signed by Daniel Enright.

Mr. LISHMAN. These checks were given to you as advances before you had gone off the show?

Mr. STEMPEL. Yes, sir.

Mr. LISHMAN. You could have lost all the money under the rules of the game?

Mr. STEMPEL. Yes, sir; conceivably it was very possible for me to have been involved in these numerous ties and lose every cent.

Mr. LISHMAN. The only way in which these people could be sure of this thing was to fix it so you would come up with at least enough to cover this advance?

Mr. STEMPEL. Yes, sir.

Mr. LISHMAN. Mr. Chairman, I would like to have photostatic reproductions of these two checks introduced in the record.

The CHAIRMAN. Without objection they will be included in the record.

(Photostatic reproductions of the two checks referred to follow:)

No. 123 1953 216		Pay Next Payment \$100.00 \$ 100.00	
Robert G. Gorman 100-12 10th Ave. Forest Hills, New York		Dol. Inc. "Twenty One" 100-12 10th Ave. Forest Hills, New York	
To (Inclusive Trust Company of New York, New York, N. Y.)		\$ 100.00	
Robert G. Gorman 100-12 10th Ave. Forest Hills, New York		\$ 100.00	
To (Inclusive Trust Company of New York, New York, N. Y.)		\$ 100.00	

Robert G. Gorman
100-12 10th Ave.
Forest Hills, New York

Dol. Inc.
"Twenty One"
100-12 10th Ave.
Forest Hills, New York

To (Inclusive Trust Company of New York, New York, N. Y.)

\$ 100.00

Robert G. Gorman

The CHAIRMAN. What was the total advancement?

Mr. STEMPEL. \$18,500.

Mr. LISHMAN. Were any inducements given to you to lose to Mr. Van Doren?

Mr. STEMPEL. Yes, sir. I was told that I would get a chance to appear on the "Steve Allen Show." I was told that I was going to get a job in the Barry & Enright organization as some sort of research consultant for \$250 a week, and other benefits to follow which were not specifically named.

Mr. LISHMAN. Now, Mr. Stempel, do you have any personal direct knowledge that any of the other contestants on "Twenty-one" ever received assistance in advance of their appearance on the program?

Mr. STEMPEL. I have no personal direct knowledge.

Mr. LISHMAN. Do you have any other kind of knowledge relating to this situation?

Mr. STEMPEL. I can only say that inferentially there must have been help given in that, according to the kinescope which we witnessed, I was told by Mr. Enright in advance exactly what the scores would be in every single game. He told me in the first game the score would be 17-17. He told me in the second game the score would be 21-21. He told me in the third game—I said "What happens to the third game"—he said, "You will be pleasantly surprised because there was another 21-21 tie." This is the only knowledge I have of the fact that apparently Mr. Enright—and this is only a supposition, of course, not by direct knowledge—had to know what the other contestant was doing in order to name what the scores would be in advance.

Mr. LISHMAN. Now, Mr. Stempel, what was the date of the last program on which you appeared?

Mr. STEMPEL. December 5, 1956, sir.

Mr. LISHMAN. Prior to that, you were told what acting mannerisms to employ in losing gracefully?

Mr. STEMPEL. Yes, sir.

Mr. LISHMAN. Do you remember what the questions were and the answers?

Mr. STEMPEL. On the night I lost, sir?

Mr. LISHMAN. Yes, sir.

Mr. STEMPEL. I believe that one of the questions, as I remember—I know that the last question on which I lost, or rather the first question of the last game had to do with American newspapers. That was the one about William Allen White, the Emporia Gazette, and "What Is the Matter With Kansas?" and I was supposed to miss the third part which I did. The second one had to do with Queens of England, or "Queens," as I remember the category. Both Van Doren and I took a 10-point question and answered it successfully.

Mr. LISHMAN. Did you know from your own personal knowledge the answers to the question that you missed?

Mr. STEMPEL. I most certainly did, sir.

Mr. LISHMAN. Was this the same show on which you were asked the question about "Marty," the moving picture?

Mr. STEMPEL. Yes, sir; it was. That was in the first game of the evening, and "What Is the Matter With Kansas?" was the second game of the evening.

Mr. LISHMAN. There is no doubt you could have answered both of those questions correctly and without any coaching whatever?

Mr. STEMPEL. Yes, sir; that is correct.

Mr. LISHMAN. During the time that you were appearing on the program, did you have occasion to tell other persons in advance what your score would be on a particular evening?

Mr. STEMPEL. Yes, sir.

Mr. LISHMAN. And what your answers would be to certain questions?

Mr. STEMPEL. Yes, sir. As I remember, I told quite a few people.

Mr. LISHMAN. Could you name some of the people to whom you gave this advance information as to what was going to happen on this contest of knowledge?

Mr. STEMPEL. I told it to a friend of mine by the name of Bertram Hacken. I told it to my physician, Dr. Nathan Brody. I believe I told the question and answer or something like that to a friend of mine, Richard Janofsky. I told my maid, who was employed for me, the night I was going to lose, as I walked out of the house, that I was going to lose. I told several other people. I told my druggist, as a matter of fact, the entire game one time, who was going to get how many points, the amount of points I was going to take on each question, what the questions were, and what the answers were. He was very pleasantly surprised. As usual. I also told my barber. My barber told his daughter and the daughter saw that everything came to pass just as I had told them.

Mr. LISHMAN. Did you also tell Mr. Alfred Davis?

Mr. STEMPEL. Yes, sir; I did. He was a public relations man.

Mr. LISHMAN. How many times did you tell Mr. Davis in advance?

Mr. STEMPEL. Several times.

Mr. LISHMAN. Do you recall the specific instances when you told Mr. Davis?

Mr. STEMPEL. The main time I remember telling him was the night I was about to lose. I was very, very upset about it. In fact, I offered to refund Mr. Enright some of his money to let me play the game honestly, because it had become a college fight. In other words, one school versus another, and they had played it up as such.

Mr. LISHMAN. Did Mr. Enright refuse to let you play an honest game?

Mr. STEMPEL. Yes, he did. He told me for the good of the show that I had to go.

The CHAIRMAN. Did I understand you to say, Mr. Stempel, that you participated with Mr. Van Doren from October 17 or earlier until December 4?

Mr. STEMPEL. No, sir. It was only the last 2 weeks. In other words, I believe it was on November 27, if I am not mistaken, and December 5. The last 2 weeks, the seventh and eighth weeks of my participation.

The CHAIRMAN. Do I understand you were told that that was the evening you were going to lose, and again you claim that you knew the answers and could have answered the questions on which you gave the wrong answers and lost?

Mr. STEMPEL. Yes, sir. As a matter of fact, subsequently I would like to bring up something. When my attorney and I were in the

office of Barry & Enright, in fact speaking to Mr. Enright about this job he had promised me, Mr. Enright said to me, "You didn't miss the question because I told you to. You missed it because you didn't know the answer." This was not true because I did know the answer. I had seen the picture two nights before, as I have remarked before.

The CHAIRMAN. Very well. You may proceed.

Mr. LISHMAN. Mr. Chairman, I think at this time the witness has testified generally as to what went on on the show on December 5 when he lost, and I think it would be material to our investigation that we have a kinescopic showing of a portion of that show so we can now see what the witness has just testified to is completely accurate. Again I would like to have the privilege of having placed in the record a transcript of the tape recording of the questions and answers which will be supplied to the reporter at a later time.

The CHAIRMAN. Without objection, it will be included in the record.

(Showing of kinescope.)

(Transcript of the sound track follows:)

BARRY. Good evening. I'm Jack Barry. Tonight here on "Twenty-one" Herbert Stempel, our 29-year-old GI college student, can win \$111,500, the highest amount of money ever to be won on television. But to do this he's risking much of the money he has won thus far. So right now let's meet our first two players, as Geritol, America's No. 1 tonic, presents "Twenty-one."

ANNOUNCER. From New York City, Mr. Charles Van Doren, and, returning with \$69,500 from Forest Hills, N.Y., Mr. Herbert Stempel.

BARRY. Gentlemen, welcome back to "Twenty-one." Your two smiling faces here tonight after that hectic battle you were involved in last week—I'm sure we're in for tremendous excitement here on the program. How are you tonight, Mr. Van Doren?

VAN DOREN. I'm all right.

BARRY. You're OK? And, Herb, you've got your \$69,500 riding here at stake. How do you feel. OK?

STEMPEL. I'm fine, thank you.

BARRY. Good enough. Herb, there's been some question raised as to whether or not you knew, before going into this game, that should there be tie games occur as they have, that so much more of your money would be risked—I mean, for instance, right now we're going to be playing for \$2,000 a point. Were you aware that this would, would happen, could happen?

STEMPEL. Sure I was, Mr. Barry. I knew it all along since I've been in the game to start with, and as a matter of fact I have played several tied games, one with Dr. Carballo and—

BARRY. That's right, you did—

STEMPEL. And also with Miss—Miss Strong—

BARRY. Uh-huh.

STEMPEL. And I know I'm putting an awful lot of money on the line. I'm certainly risking an awful lot of money, but by the same token I could win a lot of money, too, which is also very important.

BARRY. Yes, indeed you can. You can win or lose a lot. All I wanted to make clear was that you knew certainly that this could possibly happen. You had no way to know that it would happen, but that it could possibly happen, as it did with Dr. Carballo?

STEMPEL. That is right, Mr. Barry.

BARRY. Right, Herb, and I hope we've cleared that up for some of the viewers who have wondered about it, and if you two fellows are ready, may I caution you once again that tonight it'll be the biggest game we've ever played here on the program—\$2,000 a point. Be very, very careful before you answer—take your time, and the very, very best of luck to both of you.

Neither player inside the studios can hear anything until I turn their studios on with switches which I control right here in front of me, nor can they see anybody in the television studio audience because of the way the lights are constructed. Can you hear me, Mr. Van Doren?

VAN DOREN. Yes, I can.

BARRY. Very good; I have your studio on. Your studio's on, Herb. Can you hear me?

STEMPEL. Yes, I can.

BARRY. All right. Now we're going to go on trying to get 21—I'll be back to you in just a moment, Herb.

Now, Mr. Van Doren, I guess you know pretty well from last week how to play this game—you gotta try to score 21 points, you do it by answering questions that have a point value from 1 to 11. The high point questions are much more difficult than the lower point questions, and you'll tell me how much you know about the category by grading yourself from 1 to 11. The first category, the Civil War. How much do you know about it—you tell us from 1 to 11.

VAN DOREN. That's an awful big subject. Uh, I'll try for 8 points.

BARRY. For 8 points, because of a disagreement with his commanding general, Ulysses Grant was virtually placed under arrest for a brief time early in 1862. Who was the commanding general of the Union Army at that time?

VAN DOREN. Oh, yes, uh—I know his name. Halleck, General H. W. Halleck.

BARRY. You're right—you have 8 points. Herb Stempel, \$69,500 is at stake, at \$2,000 a point. Of course the winner will get the difference at the end of this match in your scores at \$2,000 a point. The category is the Civil War. How many points do you want.

STEMPEL. I'll try 9.

BARRY. For 9 points, because he did not sanction secession, this man was the only southerner who refused to leave the United States Senate when his State seceded from the Union in June of 1861. Name him and the State he represented.

STEMPEL. Andrew Johnson of Tennessee.

BARRY. You're right—you have 9 points. Mr. Van Doren, you have 8 points. The category is boxing. How many points do you want, from 1 to 11.

VAN DOREN. I'm not sure I should do this—uh, I'll try for nine points.

BARRY. For 9 points, name the three heavyweight champions immediately preceding Joe Louis.

VAN DOREN. Well, uh, Louis defeated James J. Braddock, and before Braddock was Max Baer, and before Baer was either Max Schmeling or Primo Carnera. Let's see—uh—I believe it's Schmeling. Was it Schmeling?

BARRY. No, I'm sorry, it was Primo Carnera. I'm sorry, you lose 9 points. That's—you don't go below zero, we put you back to zero, and better luck on the next round.

Herb Stempel, you have 9 points, the category is boxing. How many do you want to try for?

STEMPEL. Seven.

BARRY. For 7 points, one of the most famous promoters in boxing history, the man who promoted the first million dollar gate, is largely responsible for prize fights being staged out of doors. Name this man.

STEMPEL. Tex Rickard.

BARRY. Right. You now have 16 points. Gentlemen, I want to caution you not to speak now because this is the one point when you can be heard. This is the spot you know before we've reached 21 when you get a chance to stop the game. If either of you want to stop the game you can do so, but I caution you not to do it, particularly if at \$2,000 a point, unless you really think you are leading at this point. If either of you stops the game whoever has the higher score at this point will win \$2,000 a point for the difference in your scores. If neither of you wanta stop, we'll then continue on to 21. I'm going to give you some time to think it over. [Click of studios being turned off.]

If either player stops the game now Herb Stempel, who is leading by 16 points, at \$2,000 a point, will win \$32,000 more, bringing him up to \$101,500. But he doesn't know it, because they do not know each other's scores. Let's see what happens. [Click of studios being turned on.]

If either of you want to stop the game, you must tell me so right now. No—neither of you? Well, gentlemen, I'm ah—I think I need a breather more than you do, so suppose we take time out here for just a second while I talk to the people and then we'll continue on with our game of "Twenty-one." Please don't talk because your studios are both on the air.

Oh, questions, questions—I guess I've asked thousands of questions at one time or another here on television. I haven't got enough used to it yet, but there is one simple question that I think almost everybody asks everybody else—I think you know the question—what's the weather gonna be like? Well, from

the reports that we have had from all around the country and especially right here in New York—it's been hot and cold and unseasonable and it looks like we're really in for a tough, rough winter. And I think you know what that means, too—it means plenty of sickness. So will you remember, if you feel tired and run down and especially after a cold, flu, sore throat or a virus, you may suffer from iron deficiency anemia—that's a very fancy term for what we call tired blood. Tired blood. You check with your doctor, and to feel stronger fast—take Geritol. In just 24 hours Geritol iron is in your bloodstream, carrying strength and energy to every part of your body. Just two tablespoons of liquid Geritol or two of the Geritol tablets contain twice the iron in a pound of calves liver. So remember, if tired blood is your problem, especially in this rough weather after those colds or flu or sore throat or a virus, take either the good-tasting liquid Geritol, or the handy Geritol tablets and take it every day. Believe me, you'll feel stronger fast—within 7 days—or you get your money back.

All right, gentlemen, we're going on now to "Twenty-one." Herb, I'll be back to you in just a moment. Mr. Van Doren, you have no points at the present. The category is "movies and movie stars." How many points do you want from 1 to 11?

VAN DOREN. I think I should take about 7, but I just can't risk it—uh, I'll try for 10 points.

BARRY. For 10 points, one of the tough questions—in 1954 the Oscar for the best supporting actress, best director, and best story and screenplay writer all went to people who had worked in the film "On the Waterfront." Name these people.

VAN DOREN. Well, the director was Elia Kazan.

BARRY. That's right.

VAN DOREN. And the writer was ah—ah—Schulberg.

BARRY. Right.

VAN DOREN. Budd Schulberg.

BARRY. And the best supporting actress?

VAN DOREN. Uh, well, the only woman I can remember in that picture was the one who played opposite Brando, but I would have thought that she would have got the best actress award. But if she's the only one I can remember—let's see—she was that lovely frail girl—Eva Saint—uh, Eva Marie Saint.

BARRY. Right. You have 10 points. Herb Stempel, you have 16 points. The category is movies and movie stars. How many points do you want to try for, from 1 to 11?

STEMPEL. I'll try 5.

BARRY. Which would give you 21 points if you guess this right and you will be the winner again. Because this is a critical moment, if you need some extra time you can have it. You asked—let me make sure again, you asked for 5 points. All right. What motion picture won the Academy Award for 1955? Do you need some extra time to think about it?

STEMPEL. Ah—I sure do.

BARRY. I'll tell you when your time is up.

Your time is up, Herb Stempel. For 5 points which would give you 21, what motion picture won the Academy Award for 1955?

STEMPEL (mumbling). I don't remember. I don't remember.

BARRY. You don't want to take a guess at it? If not I'll have to call it wrong, Herb.

STEMPEL. "On the Waterfront"?

BARRY. No, I'm sorry, the answer is "Marty." "Marty"—you lose 5 points which puts you back down to 11—better luck on the next round.

Mr. Van Doren, you have 10 points. The category—explorers, explorers. How many points do you want to try for?

VAN DOREN. I'm going to go all the way to 21—I mean, I mean try for 11 points.

BARRY. You want to try to get to 21 by 11—by answering an 11-point question?

VAN DOREN. That's right.

BARRY. All right. If you answer this you will have 21, but you'll still have to wait for Herb Stempel to get another crack at it, and you can have some extra time if you need it. Here is your question—Pizarro (spelling) P-i-z-a-r-r-o—was an early Spanish explorer who discovered and conquered an advance civilization. Tell us the civilization he discovered, the country this civilization was in, and the leader of the civilization at the time of the conquest. Would you like time to think it over?

VAN DOREN. As much as you can spare.

BARRY. I'll tell you when your time is up.

Your time is up. Tell us the civilization he discovered, first of all, if you can, or take it any other way you want.

VAN DOREN. Pizarro discovered the Incas.

BARRY. Right.

VAN DOREN. And the Incas lived in Peru.

BARRY. You're right. And the leader of the civilization, which would give you 21 points if you get this right.

VAN DOREN: (mumbling)—but he had a brother, Huascar—the man who had a room full of gold—I guess, I guess that Atahaulpa was the leader of the Incas at the time of the conquest.

BARRY. That's your answer—Atahaulpa?

VAN DOREN. That's right.

BARRY. Then you score 21 points! Mr. Van Doren, you have the desired number of points—21—but Herb Stempel still has to get a chance at it—now, I'm going to allow you to listen in, so please do not speak. Herb Stempel, you have 11 points. The category—"Explorers". How many points do you want to try for, from 1 to 11?

STEMPEL. I'll try 10.

BARRY. You're gonna try to go to 21?

STEMPEL. Yes.

BARRY. I can tell you now that your opponent has already scored 21 points. If you answer this next question correctly, you'll have 21 and we'll have another tie, which means we'll have to play another game at \$2,500 a point. If you miss, of course, he will win, and I'm not even going to bother to figure it up 'cause it's quite gigantic. Here is your question and take your time. You can have some extra time if you need it. Four great voyages were made by Christopher Columbus, and many different places were among his discoveries. Tell us on which voyage, the first, second, third, or fourth, each of the following places was discovered: the Virgin Islands, Martinino or Santa Lucia, Hispaniola or Haiti and South America. Do you need some time to think this over, Herb Stempel?

STEMPEL. I sure do.

BARRY. I'll tell you when your time is up.

Your time is up Herb—for 10 points which will either give you 21 or put you back down to about 1 point. Uh, four great voyages were made by Columbus, different places were among his discoveries, tell us on which voyage, the first, second, third, or fourth, each of the following places was discovered. Want to take a crack at the Virgin Islands?

STEMPEL. Uh, I'll try, uh, Hispaniola.

BARRY. All right.

STEMPEL. That was on the first voyage.

BARRY. You're right.

STEMPEL. South America was on the third voyage.

BARRY. That's right for the second part.

STEMPEL. Now what are the other two now?

BARRY. Martinino or Santa Lucia and the Virgin Islands.

STEMPEL. Martinino is on the fourth voyage.

BARRY. That is right—and the Virgin Islands?

STEMPEL. Therefore the Virgin Islands must be the second.

BARRY. You're right, and you have 21 points.

Gentlemen—gentlemen—it happened—it happened again. You both have 21 points; there is a tie. As you know, in the case of a tie we play another game, the stakes go up—we're gonna play in just a moment for \$2,500 a point. I can't even figure out how much this is, but one of you could win either \$50,000 or somewhere around there, win or lose, and I think at this point—first of all I want to say congratulations to both of you—I don't care who wins or who loses—you guys really know your onions. I want to—they really do—we're going to, we're going to take a moment out here now for you to settle down to get into this which will be an even bigger game than the other and while you relax a bit, and we all do, I'm going to call on my good friend Bob Sheppard with some important and helpful news for anyone who is suffering from common rheumatic- and arthritic-like pains. Bob.

SHEPPARD. Thank you very much, Jack. Now friends, an important new advance has been made in the relief of common rheumatic- and arthritic-like pains due to stiff, aching joints. It's Zarumin. If common rheumatic- and arthritic-

like pains make it difficult to sew, walk, or move about, try Zarumin. Zarumin must give you more freedom from these annoying pains or your money back. Now this is a Zarumin pill. And it offers this new advance. It is actually a pill within a pill. And over here is a model of the pill. As you can see, Zarumin contains an outer pill that gives fast, effective temporary relief, and an inner pill that brings more relief hours later, thus giving longer lasting relief. The result: Once again you are able to do the things that pain may have been preventing. Take Zarumin as directed—if pain persists, see your doctor. That's Zarumin at your drug store—now.

BARRY. Before we go on I would like to say that all of the questions that are used on "Twenty-one" have been authenticated for their accuracy and the order of their difficulty by the editorial board of the Encyclopedia Britannica. Fellows, you all set? Mr. Van Doren, Herb Stempel, \$2,500 a point. Take it easy on this—be very careful. I'll get back to you in a moment, Herb.

All right, Mr. Van Doren, the first category—"Newspapers." How many points do you want from 1 to 11?

VAN DOREN. I'll try 8 points.

BARRY. For 8 points, the grandsons of Joseph Medill, two of the most successful journalists in the country from 1914 on, were the owners and managers of the Chicago Tribune and the New York Daily News. Who were they?

VAN DOREN. Well, the Chicago Tribune—that would be Colonel Robert R. McCormick.

BARRY. You're right.

VAN DOREN. And the Daily News, wouldn't that be Patterson, Joseph Patterson?

BARRY. It would be, and you have 8 points.

Herb Stempel, with your \$69,500 still at stake, although now at \$2,500 a point, the category is "Newspapers." How many do you want to try for?

STEMPEL. I'll try 11.

BARRY. The toughest question of them all. One of the most revered names in American journalism is that of a Kansas newspaper publisher who died in 1944. Tell us this man's name, the name of his newspaper, and the title of the editorial he wrote which made him and his paper nationally known.

STEMPEL. The name of the editor is William Allen White.

BARRY. That is right.

STEMPEL. His paper was the Emporia Gazette.

BARRY. That is right. Finally, for 11 points.

STEMPEL. I'll have to think a little bit about the third.

BARRY. Herb, you can take a little time—you go right ahead.

It's the title of the editorial we want which he wrote. It made his paper nationally famous, and well known.

STEMPEL. I don't know.

BARRY. No idea?

STEMPEL. Just a moment—(mumble).

BARRY. I beg your pardon?

STEMPEL. Just won't help to guess, I don't know.

BARRY. I'm afraid I'm going to have to give it to you then, Herb. The editorial, the title was "What's the Matter with Kansas?" I'm sorry you don't answer—you don't lose any points, but you stay at zero. Better luck on the next round.

Mr. Van Doren, you have eight points. The category "Kings." K-i-n-g-s. How many points do you want?

VAN DOREN. I'll try for 10 points.

BARRY. For 10 points; it's well known that some of Henry the Eighth's six wives fared better than others. He divorced his first wife, Catherine of Aragon, married his sixth, Catherine Parr, just a few years before he died. Name the second, third, fourth and fifth wives of Henry the Eighth and describe their fates.

VAN DOREN. Oh, my goodness. You want me to name the second, third, fourth, and fifth wives and what happened to all of them?

BARRY. That's right.

VAN DOREN. I'll have to think a minute. Ah—Catherine—you mentioned Catherine of Aragon—she was the first one. Now the second one was, aah—Anne Boleyn.

BARRY. That's right.

VAN DOREN. Uh—and of course the poor woman was beheaded.

BARRY. That is right.

VAN DOREN. Uh, now the third—the third was Jane Seymour—

BARRY. Right.

VAN DOREN. And I believe she died a natural death—she died in childbirth—uh—

BARRY. That is right.

VAN DOREN. After the birth of the future Edward the Sixth. Now the third—the fourth now—

BARRY. Right.

VAN DOREN. Uh, let's see—two Annes—Anne of Cleves.

BARRY. Right.

VAN DOREN. And I don't think he beheaded her—no, uh, did he divorce her?

BARRY. You'll have to tell me rather than—

VAN DOREN. He—he divorced her.

BARRY. He did. You're right. Finally, the fifth.

VAN DOREN. The fifth—one more—uh, uh, one more. Oh. I think that Henry the Eighth married three, three Catherine's. Now—

BARRY. We mentioned Catherine of Aragon. Who was the other Catherine?

VAN DOREN. The sixth wife—uh, Catherine Parr—was that the sixth one?

BARRY. Yeah.

VAN DOREN. Catherine of Aragon, Catherine Parr—Catherine Howard.

BARRY. Right. And what happened to her?

VAN DOREN. Yes, what happened to her—considering Henry the Eighth he probably divorced her (mumbling) he—he divorced his—did he behead Catherine Howard?

BARRY. He did. You've got 18 points.

Herb Stempel, you have no points—the category is "Kings" K-i-n-g-s. How many points do you want from 1 to 11?

STEMPEL. I'll try 10. 10.

BARRY. Ten points. It is well known that some of Henry the Eighth's six wives fared better than others. He divorced his first wife, Catherine of Aragon, married his sixth, Catherine Parr, just a few years before he died. Name the second, third, fourth and fifth wives of Henry the Eighth and describe their fates.

STEMPEL. Second, third, fourth, and fifth?

BARRY. Right. And describe their fates.

STEMPEL. Anne Boleyn was the second—

BARRY. Right.

STEMPEL. Jane Seymour was the third—

BARRY. That is right.

STEMPEL. Anne of Cleves was the fourth.

BARRY. Right again.

STEMPEL. And Catherine Howard was the fifth.

BARRY. You're right—you've got all the names, now can you describe their fate.

STEMPEL. Well, they all died.

BARRY. Well—Herb, I'm going to have to ask you how they died.

STEMPEL. I knew what you meant, Mr.—I knew what you meant Mr. Barry, I was just making a little fun—

BARRY. First, Anne Boleyn—

STEMPEL. Anne Boleyn—executed.

BARRY. Right. Jane Seymour.

STEMPEL. I'm not sure about her—

BARRY. Want to go on to Anne of Cleves?

STEMPEL. Yes.

BARRY. All right.

STEMPEL. Anne of Cleves—divorced.

BARRY. Right. Catherine Howard.

STEMPEL. Catherine Howard—executed.

BARRY. Right. And finally, back to Jane Seymour.

STEMPEL. Died in childbirth.

BARRY. You're right. You have 10 points. Gentlemen, may I caution you now not to divulge your scores because you can hear each other. We're at the point now when you get a chance to stop the game—if either of you stops the game, whoever has the high score wins. So be very, very careful—I'm going to give you some time and I'll tell you when your time is up.

If either player stops the game right now, Mr. Van Doren, who is 8 points ahead at \$2,500 a point, will win back \$20,000 from Herb Stempel. But he

doesn't know, because they don't know each other's scores. Let's see what happens.

If either of you want to stop the game you must tell me so right now.

VAN DOREN. I'll stop.

BARRY. Then you win \$20,000. Congratulations, Mr. Van Doren. You deserve congratulations and while I'm saying that I want to say by golly you've had a tremendous run here, Herb, you had \$69,500 when you started, you lost \$20,000—you're still going to go home with \$49,500, which is a big sum. Herb, in the few brief moments we have, what are you going to do with your dough?

STEMPEL. Well, Mr. Barry, uh, this came so suddenly—the first thing I want to do is outfit my family, and I, I would also like to make a small contribution to the City College fund to repay the people of the city of New York for the free education which they have given me, then I'm going to guard the rest of my money, put it in a bank and—I—would also like to thank you and the members of your staff for all the kindness and the courtesy which you've extended to me.

BARRY. Herb, I want to say one thing—we may have a lot of contestants in the future, but I doubt that anybody will ever display the knowledge, the fighting spirit, and the courage that you have on this program. We, your friends, all the students at CCNY, I'm certain are just as proud of you as we are and deservedly so. Thank you for being a wonderful contestant—Herb Stempel, ladies and gentlemen—

Well, he went home with \$49,500—you've got \$20,000 right now Charles Van Doren, come back next week—tell us whether you want to continue playing or quit. Our congratulations for a wonderful victory. Goodnight to Charles Van Doren, ladies and gentlemen.

Friends, we don't have much time. Remember Geritol and Geritol, Jr. Good night everybody—see you next week. Thank you.

ANNOUNCER. If you often cannot sleep at nights, if you toss and turn, your nerves on edge, here's a new sleeping tablet that helps you enjoy 100 percent safe sleep. It's called Somnex. Somnex contains not just one but three medical ingredients, all working together to help you enjoy sound, 100 percent safe sleep, and to help calm down jittery nerves. Somnex contains no narcotics, nonhabit forming, get Somnex at your drugstore now, take as directed for 100 percent safe sleep.

[Closing music—NBC chimes.]

Mr. LISHMAN. Mr. Stempel, you have just seen a kinescopic showing of the program "Twenty-one" on December 5. Is it an accurate reproduction of the questions and answers that were asked you?

Mr. STEMPEL. Exactly, sir.

Mr. LISHMAN. Were you told the categories and given the questions in advance of this program?

Mr. STEMPEL. I was, sir.

Mr. LISHMAN. Who gave you that information?

Mr. STEMPEL. Mr. Daniel Enright.

Mr. LISHMAN. Were you also coached on how to act in this program?

Mr. STEMPEL. Yes, sir. As a matter of fact, the final scene was all written by a continuity writer, plus the fact that "they all dried" section was thought up by me and inserted in the program at this time.

Mr. LISHMAN. Did you know in advance the score on which you would lose was 18 to 10?

Mr. STEMPEL. Yes. As a matter of fact, I spoke to, I believe, David Gelman of the New York Post, and told him exactly what the score was going to be.

Mr. LISHMAN. We have other questions we would like to ask you, and I know the committee members have questions, but there is one witness who will corroborate your testimony in part who is a doctor and has some patients seriously ill, who has to return to New York

this afternoon. I would ask the chairman at this time to take Dr. Brody out of turn as a witness, in order that he may corroborate the witness' testimony that he had been coached in advance and knew what the outcome of each show was before he appeared on the program.

The CHAIRMAN. As I understand, Dr. Brody will take just a few minutes.

Mr. LISHMAN. Yes, sir; a very few minutes.

The CHAIRMAN. Mr. Stempel, you may stand aside momentarily, and after we hear Dr. Brody, we will recess for the noon hour and you may return to the stand after lunch.

Dr. Brody, will you be sworn? Do you solemnly swear the testimony you give to this committee to be the truth, the whole truth, and nothing but the truth, so help you God?

Dr. BRODY. I do.

The CHAIRMAN. You may be seated.

TESTIMONY OF DR. NATHAN BRODY

Mr. LISHMAN. Dr. Brody, are you acquainted with the witness, Mr. Stempel?

Dr. BRODY. I am.

Mr. LISHMAN. Have you been here in this room during the kine-scope reproductions and the testimony given by Mr. Stempel?

Dr. BRODY. Yes, sir.

Mr. LISHMAN. Is it a fact that in advance of his appearance on these shows he told you that he had been informed of the categories and given the questions and answers that would be used on the program?

Dr. BRODY. It is not quite that way, sir.

Mr. LISHMAN. Will you state what he told you?

Mr. BRODY. He came in the afternoon before the last show, the one we have just seen. He told me, the words exactly as I can remember them, were, "Tomorrow I take a dive." I asked him what he meant. He said, "The first round will be a tie for 21."

Mr. LISHMAN. The first round will be a tie for 21?

Dr. BRODY. And the second round I lose \$20,000. That is all.

Mr. LISHMAN. That is all he told you?

Mr. BRODY. That is right.

Mr. LISHMAN. He told you that on the afternoon of December 5?

Dr. BRODY. I don't know the date. It was the day before the last show.

Mr. LISHMAN. Did you watch the show?

Dr. BRODY. I did.

Mr. LISHMAN. Did what he told you actually happen?

Dr. BRODY. Exactly.

Mr. LISHMAN. That is all I have of this witness, Mr. Chairman.

The CHAIRMAN. Did you give your name and address?

Dr. BRODY. I have just given my full name, not the address.

The CHAIRMAN. Will you give us your address for the record?

Dr. BRODY. 67-66 108th Street, Forest Hills 75, N.Y.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Doctor, what kind of a doctor are you?

Dr. BRODY. General practitioner. Medical doctor.

Mr. SPRINGER. You are not a psychiatrist?

Dr. BRODY. No, I am not. Thank you.

The CHAIRMAN. Doctor, I want the record to show that you are a voluntary witness here, and we want to thank you for your cooperation and your willingness to come down here to testify.

Dr. BRODY. Thank you, sir.

The CHAIRMAN. The committee will recess until 1:30.

(Thereupon at 12:05 p.m., a recess was taken until 1:30 p.m., the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will be in order.

Is Mr. Janofsky here?

Mr. Janofsky, I understand that you are very anxious to get away and get back home. Your testimony will be very short. If you prefer, you may come around now.

Will you be sworn?

Do you solemnly swear the testimony you give this committee will be the truth, the whole truth and nothing but the truth, so help you God?

TESTIMONY OF RICHARD JANOFSKY

Mr. JANOFSKY. I do.

The CHAIRMAN. Will you state your name for the record, please?

Mr. JANOFSKY. Richard Janofsky.

The CHAIRMAN. Your address?

Mr. JANOFSKY. 1153 Grand Concourse, Bronx, N.Y.

The CHAIRMAN. What is your business or profession?

Mr. JANOFSKY. Salesman.

The CHAIRMAN. Mr. Lishman.

Mr. LISHMAN. Mr. Janofsky, are you acquainted with Mr. Stempel?

Mr. JANOFSKY. Yes, I am.

Mr. LISHMAN. Have you been present in the committee room this morning?

Mr. JANOFSKY. Yes, I was.

Mr. LISHMAN. And you have seen all the kinescope reproductions?

Mr. JANOFSKY. Yes, I have.

Mr. LISHMAN. Did Mr. Stempel tell you prior to his appearance on the "Twenty-One" quiz program that he knew what categories would be used and that he had been furnished questions and answers?

Mr. JANOFSKY. The way you put it, it is partially right and partially wrong.

Mr. LISHMAN. Will you please explain exactly what he did tell you in advance of the given show as to what would happen on that show?

Mr. JANOFSKY. During the course of conversation over the telephone, he told me that he had the questions and answers for that particular show.

Mr. LISHMAN. Do you recall which show that was?

Mr. JANOFSKY. I can only recall one particular question and actually, it was probably that series of questions for that particular show.

Mr. LISHMAN. Do you recall the date or approximate date of that show?

Mr. JANOFSKY. No.

Mr. LISHMAN. What did he tell you?

Mr. JANOFSKY. He said to me that, you, too, can be smart if you have the answers in advance, and that we would have a little fun with

my wife by me having the questions and answers before he went on the air.

Mr. LISHMAN. Did you have that little fun with your wife?

Mr. JANOFSKY. Well, yes.

Mr. LISHMAN. Is it true that when you were watching the program that evening that the question and answer Mr. Stempel had given you were exactly as he told you earlier in the day?

Mr. JANOFSKY. Yes. I actually was interested only in the answers to questions No. 1, 2, 3, and so forth, knowing that he was going to miss one of the questions and there would be the great opportunity of me answering while he misses.

Mr. LISHMAN. You mean, Mr. Janofsky, that Mr. Stempel told you the question he would lose as well as the questions he would answer?

Mr. JANOFSKY. Well, yes, I knew he was going to miss one question. That is actually the only question I remember.

Mr. LISHMAN. Did he miss that question?

Mr. JANOFSKY. Yes, he did.

Mr. LISHMAN. Did you answer to your wife when it was asked?

Mr. JANOFSKY. Yes.

Mr. LISHMAN. Did you receive that answer from Mr. Stempel?

Mr. JANOFSKY. Yes, I did.

Mr. LISHMAN. What is the answer?

Mr. JANOFSKY. The answer was on the Gothic architecture question.

Mr. LISHMAN. Mr. Stempel gave you that correct answer preceding the show?

Mr. JANOFSKY. That is correct.

Mr. LISHMAN. But on the show he missed it?

Mr. JANOFSKY. That is right.

Mr. LISHMAN. And you witnessed that?

Mr. JANOFSKY. That is right.

Mr. LISHMAN. And your wife with you?

Mr. JANOFSKY. Well, she only heard me say the Gothic.

Mr. LISHMAN. I think that is enough to establish that Mr. Stempel, in advance of his appearance on the program, had informed others of what the outcome or what the questions would be on the program.

We have other witnesses who will corroborate Mr. Stempel's testimony, but we have not called them at this particular session and I don't believe it will be necessary to do so.

The CHAIRMAN. Very well.

Is that all of this witness?

Thank you very much.

Mr. JANOFSKY. Thank you.

The CHAIRMAN. Mr. Stempel, you may resume.

TESTIMONY OF HERBERT M. STEMPEL—Resumed

The CHAIRMAN. Do you have any further questions of Mr. Stempel, Mr. Lishman?

Mr. LISHMAN. One or two questions, Mr. Chairman.

Now, Mr. Stempel, have any pressures ever been brought to bear on you to keep this whole matter quiet?

Mr. STEMPEL. Actually in a way, yes. In other words, all sorts of blandishments and promises were made to me, as I have stated be-

fore; that I would get certain jobs if I shut my mouth; I would make certain appearances on shows and become a part of the Barry & Enright staff, and so forth, if I would just, very bluntly, shut my mouth and not say anything about this to anybody.

Mr. LISHMAN. Did you accept any of these jobs that were offered?

Mr. STEMPEL. No, I never have because they never materialized. I was promised a \$250 a week job as a program consultant, as I stated before. I was supposed to go to work on June 6, 1957, upon graduation from City College when I got my bachelor's degree.

The day I came up, Mr. Enright informed me that he had just sold the program to NBC and he could not use me. I found out later on he still had full control of the hiring and firing on this particular program. This was just one incident.

Also, he told me another day that he was contemplating another show called "High-Low." This was going to be a rotating 30-person panel. He claimed he submitted my name to this panel along with 29 other people and they had rejected 3 people, namely, a woman by the name of Miss Ruth Miller, who would appear against Van Doren the night he won \$99,500, January 15, 1957; the actor Carl Reiner, and myself. This was about the last episode of having him tell me he was going to give me these jobs.

Mr. LISHMAN. Mr. Witness, did you ever make any phone betting on "Twenty-one"?

Mr. STEMPEL. I did.

Mr. LISHMAN. Will you please explain how you did that?

Mr. STEMPEL. Yes. I came up to Mr. Enright's office in March. At that time Van Doren was engaged—

Mr. LISHMAN. March of what year?

Mr. STEMPEL. 1957, sir.

At that time Mr. Van Doren, as I remember, was engaged in a series of ties with an attorney by the name of Mrs. Vivian Nearing. I had participated at City College in one or two charity matches to raise some money for various charities and they requested when I graduated in June that the night before I graduated or the night on which I graduated, that they have a charity match between Charles Van Doren and myself.

I went to approach Mr. Enright about this particular thing, and he told me very, very bluntly—as I walked into his office there was a very large picture of Charles Van Doren upon his desk. This was taken out of Time magazine. They ran a six-page article on Charles Van Doren. I asked him if Charles Van Doren could play me in this charity match which was being contemplated for June. He informed me very bluntly—I can practically quote it verbatim because I remember it—Charlie had no more desire to play any more quiz contests, but if Mrs. Nearing was still on the show she would be there. Immediately I understood that Monday night Charles Van Doren would be going off the show.

I went to my bank on Monday morning and on a calculated risk I took out \$5,000 and bet it around at 2-to-1 odds and won \$10,000.

Mr. LISHMAN. Mr. Stempel, do I understand your testimony to mean that you knew the time and manner in which Mr. Van Doren was going to lose?

Mr. STEMPEL. That is correct, sir.

Mr. LISHMAN. Where did you get that information?

Mr. STEMPEL. Directly from Mr. Enright because he told me, by inference, if Mrs. Nearing is still on the show she would be there, which could mean only one thing to me; namely, that Charles Van Doren would lose, the way the pattern of the show was running.

I spoke to Dave Gehman, a reporter for the New York Post, and just about predicted the exact score, 17-10; in fact, I did predict the exact score 17 to 10.

Mr. LISHMAN. How much money did you win on that betting?

Mr. STEMPEL. \$10,000. The odds were 2 to 1.

Mr. LISHMAN. You never had any direct knowledge that Mr. Van Doren ever received any assistance?

Mr. STEMPEL. No direct knowledge. It has been by what prior testimony has been given.

The CHAIRMAN. Would that apply to every other contestant that you know anything about?

Mr. STEMPEL. Yes, sir.

I have no direct knowledge concerning any other contestant on the show.

Mr. LISHMAN. Mr. Stempel, are you familiar with the fact of a press release that was issued on August 28, 1958, by the National Broadcasting Co., which reads as follows:

The charges made by Herbert Stempel against the quiz show, "Twenty-one," first came to our attention over a year ago. At that time, we made an investigation and found them to be utterly baseless and untrue. We are completely convinced of the integrity of "Twenty-one" as a program and of the integrity of its producers, Barry & Enright.

At the time these charges were first brought to our attention, and shortly thereafter, two major New York newspapers made thorough investigations of them and apparently concluded, as we did, that they had no basis in fact. As a result, they printed nothing.

We have indicated to the district attorney's office we are prepared to cooperate fully in any investigation of the "Twenty-one" program or any other quiz program broadcast over our facilities.

Are you familiar with that press release?

Mr. STEMPEL. Yes, sir.

As a matter of fact, I heard it many, many times thereafter. I read it in the paper just about every day in the week. In fact, it began to become a bit of a drone because that is all they ever kept saying: "We have complete faith in the honesty and integrity of Jack Barry and Dan Enright."

The point is that I swear before this committee that I had never made any charges to NBC whatsoever. I never made any accusations. I never was up to any NBC offices to make any accusations. To the best of my knowledge, they could not have made any investigation because I made no complaint to NBC.

Mr. LISHMAN. Were you ever interviewed by anyone on behalf of NBC to ascertain whether or not your statements were true and correct?

Mr. STEMPEL. Under oath, no.

Mr. LISHMAN. Did they ever ask you about your corroborating witnesses?

Anyone?

Mr. STEMPEL. Nobody, as a matter of fact, from NBC ever approached me.

I would like to see any bit of material which they could show me in the form of a written statement of any type saying that I made any sort of complaint because, to the best of my knowledge, I have never made any complaint to NBC.

Mr. LISHMAN. Mr. Stempel, did you ever see me before today?

Mr. STEMPEL. Never in my life, sir.

Mr. LISHMAN. In other words, the questions and answers you are now giving have not been rehearsed with me?

Mr. STEMPEL. That is correct, sir.

Mr. LISHMAN. And they are truthful?

Mr. STEMPEL. That is correct, sir. Under oath I am telling exactly what the story is.

Mr. LISHMAN. That is all of my questions.

The CHAIRMAN. In order that there will be no misunderstanding, staff members of this committee have talked to you; is that not true?

Mr. STEMPEL. That is correct.

The CHAIRMAN. Mr. Mack, are there any questions?

Mr. MACK of Illinois. Mr. Stempel, do I understand that you were coached on each occasion before you participated in this program?

Mr. STEMPEL. That is correct, sir.

Mr. MACK of Illinois. In addition to rehearsing the questions, you also were coached as to how to answer the questions?

Mr. STEMPEL. That is correct, sir.

Mr. MACK of Illinois. As part of this coaching, did they indicate that you should pass certain questions or certain parts of a question?

Mr. STEMPEL. Yes, sir.

This is what is commonly used to refer to as the recapitulation.

If I might demonstrate for the committee this little bit of histrionic business: In a seven- or eight-part question, take the first part, the second part, the third, skip the fourth, the fifth, the sixth, the seventh and the eighth, come back to that particular question, close your eyes, count off and mumble these answers on your fingers. In the meantime, strain for this particular answer to heighten the tension.

I was always instructed by Mr. Enright to count off what he called a beat. In other words, this is a second pause before each particular thing I did in such a way that a certain amount of seconds would elapse to heighten the tension to the optimum. Then I was to suddenly open my eyes and with a dazzling smile give the answer and explode when Jack Barry said "that is right."

That is exactly how we were instructed.

Mr. MACK of Illinois. I noticed also that these programs have always seemed to end at the most appropriate time. I guess the coaching controls the timing so that it ended at the most appropriate time, so that they could run a commercial before the time expires?

Mr. STEMPEL. You have just anticipated me, sir.

I was going to add what I consider to be a group of logical proofs in addition to these inferential and positive proofs.

No. 1, in the 72 weeks, to the best of my knowledge, that "Twenty-one" was on the air, I don't believe it ever ran overtime one time. I believe this can be pretty well verified. This is quite unusual for any program, including some of your dramatic series which would occasionally get cut off; in fact, quite often.

No. 2, every winner who ever appeared on "Twenty-one" was a New York resident, except for Harold Craig, who came from New York State, and the last two winners were from Los Angeles.

I believe in my opinion, I was strictly surmising, they did this so they would be able to get in touch with a contestant very rapidly. They could not tell him to take a jetplane from California. But they could tell him to take a subway from the Bronx. This is a matter of record.

Usually we find, on practically every other contest you find representative groups from every other part of the United States. Here you have nothing but New York winners except Harold Craig, New York State. The last two contestants came from Los Angeles, two big winners.

The CHAIRMAN. Mr. Stempel, if I understand this correctly, you were on either 10 or 11 programs?

Mr. STEMPEL. Eight programs.

The CHAIRMAN. So that the record will be clear, on each and every one of those eight programs you were supplied with the questions and the answers?

Mr. STEMPEL. That is correct, sir, from the first to the last.

The CHAIRMAN. In the course of being supplied with this information, did you talk with anyone else besides Mr. Enright?

Mr. STEMPEL. Only with Mr. Freedman to say "Hello," and so forth. He would usually issue me the continuity card for the week.

The CHAIRMAN. Issue the what?

Mr. STEMPEL. This is the repartee.

In other words, the conversations which you saw when I went off the air and made this final parting speech. This is a typewritten thing which is prepared by their writers, or this conversation you have with Mr. Barry when you come on the air. This banter, this conversation, which is written by a writer who thinks up these nice things to say which would appeal to the general mass of the public.

Mr. SPRINGER. Did Mr. Freedman at any time ever supply you with any of the questions or answers?

Mr. STEMPEL. He did not, sir.

Mr. SPRINGER. Mr. Stempel, apparently you have a very high IQ, is that correct?

Mr. STEMPEL. That is correct.

Mr. SPRINGER. Would you state what it is numerically?

Mr. STEMPEL. Approximately 170.

Mr. SPRINGER. What is genius on the scale?

Mr. STEMPEL. I think about 145 or 150.

Mr. SPRINGER. One thing further, Mr. Stempel:

Is any of the testimony which you have given in this hearing motivated by any animosity toward Mr. Enright or Mr. Barry or any other person who failed to live up to what you considered to be an agreement.

Mr. STEMPEL. I would say the following, sir:

As I have testified before, I have no feelings of animosity toward Mr. Barry, who has in no way hurt me. I feel that Mr. Enright has not lived up to his agreements. However, it extends even further. I have been bothered very deeply by my conscience, especially as I told the committee before from the time this school vendetta started in

the last week or so and I was playing against Van Doren. I was very hurt at being forced—I am very funny that way—to miss questions which were quite easy to me. This sort of hurt me. I don't know why; it just did.

Mr. SPRINGER. Beyond that you have no feeling in this matter?

Mr. STEMPEL. I just want—this has become a hearing which I want to end and tell my story and finish.

Mr. SPRINGER. Mr. Stempel, have you ever at any time had any psychiatric treatment?

Mr. STEMPEL. I have, sir.

Mr. SPRINGER. Was that extended?

Mr. STEMPEL. That was after I left the "Twenty-one" program, sir.

Mr. SPRINGER. You had none before that?

Mr. STEMPEL. I had never had any before in my life.

Mr. SPRINGER. After that, was it an extended period?

Mr. STEMPEL. It was approximately a 10-month period at a private psychiatrist's in Forest Hills on my own volition because I felt we all can use some help and I went to seek him myself. I was very nervous.

Mr. SPRINGER. Did you feel that the psychiatric treatment that was necessary was caused by your conduct and relation with these other people on the program?

Mr. STEMPEL. I felt that this was quite a contributory factor, sir.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Texas. Mr. Stempel, do I understand that the first you knew about this being a matter to be set up and to be fraudulent, let us say, as far as the eyes of the public is concerned, was when this man asked you if you wanted to make \$25,000?

Mr. STEMPEL. That is correct, sir.

Mr. ROGERS of Texas. As I understand you, after that you did everything you were told to do except wear that double-breasted suit that last night?

Mr. STEMPEL. That is correct.

Mr. ROGERS of Texas. They asked you to do a lot of things?

Mr. STEMPEL. That is correct, sir.

Mr. ROGERS of Texas. Did they ever make you drink any Geritol?

Mr. STEMPEL. Frankly speaking, I couldn't see spending \$2.98 for 25 cents worth of cheap medicine.

Mr. ROGERS of Texas. What were those tablets?

Mr. STEMPEL. Zarumin.

Mr. ROGERS of Texas. What are they supposed to do to you?

Mr. STEMPEL. They are allegedly to cure rheumatism.

Excuse me, "cure" is not right. "Relief."

Mr. ROGERS of Texas. Were you familiar with these products at all?

Mr. STEMPEL. I had seen them advertised when Jack Barry and Dan Enright had "Life Begins at 80" for these octogenarians who used to appear before cameras and sort of commit capers.

Mr. ROGERS of Texas. Mr. Stempel, we know of course from your testimony when you decided to "kiss"; when did you decide to tell?

Mr. STEMPEL. I decided to tell immediately after having left the program. In fact, I was contacted by David Gelman of the New

York Post in February of 1957, and I revealed to him the whole story from beginning to end. The Post, however, was afraid to print this because they were afraid it might involve them in libel suits.

Mr. ROGERS of Texas. You did not decide to tell until after you got your money?

Mr. STEMPER. That is correct.

Mr. ROGERS of Texas. Had you cashed your check?

Mr. STEMPER. I had cashed my check; yes.

Mr. ROGERS of Texas. Was that check written on the company, the last one you got, and the payment stopped if you talked earlier?

Mr. STEMPER. They were all written on Dojo, Inc.

Mr. ROGERS of Texas. What was that? Jojo?

Mr. STEMPER. Dojo. D-o-j-o. That is the incorporated name for Barry & Enright "Twenty-one" program. They run a lot of operating companies and they have one holding company in the corporate structure.

Mr. ROGERS of Texas. What was this fellow's name you told on the Post?

Mr. STEMPER. David Gelman.

Mr. ROGERS of Texas. You say he was afraid to print it?

Mr. STEMPER. The libel lawyers were afraid to print it for fear that they might get involved in libel suits.

In fact, may I say, sir, that in September 1957, I told the whole story to Jack O'Brien and Jim Horan of the New York Journal-American. For 12 weeks, as I said before, I had been told that I was persona non grata on this summer replacement, Tennessee Ernie Ford, called "High-Low." A special services staff of the New York Journal-American, which had written a three-part serial but could not print it because the libel lawyers were afraid, went up to Enright and accused him of fixing the program.

I received a call from him and he asked me, on the last week summer replacement, if I would like to appear for "High-Low" for \$500 for the half hour. I told him "I am sorry, I do not wish to appear." I did not appear.

Mr. ROGERS of Texas. Have you been threatened by anyone with a lawsuit of any kind?

Mr. STEMPER. No, sir.

Mr. ROGERS of Texas. You say you picked up an extra \$10,000 betting on a horse you knew was coming in, so to speak?

Mr. STEMPER. Yes, sir.

Mr. ROGERS of Texas. Did any of your friends make any money off the tips you gave them?

Mr. STEMPER. I felt this was a sort of private stock deal. It was a calculated risk in that Mr. Enright might have changed his mind at the last minute. It was a sort of gamble.

Mr. ROGERS of Texas. You said you were very much upset when you got into this school contest or old school contest at the last with Van Doren. There was not anything to make you answer that question wrong, was there?

Mr. STEMPER. Yes, sir; there was.

Mr. ROGERS of Texas. What was that?

Mr. STEMPER. That was the following: This particular agreement I had signed with them by which, even if I went over the \$100,000,

he would only be forced to pay me \$60,000, in this way I was getting \$50,000, so the \$10,000 spread. Furthermore, with a future promise of jobs, et cetera, which he offered to me, I recalculated on the tax basis that my earnings would eventually total more than if I had "double-crossed" them and gone ahead.

Once I had double-crossed them, let us say, there was one of two recourses: Either to quit the program next week or to play with the other party being arranged against you and face the consequences.

Mr. ROGERS of Texas. Both of you were dancing to the tune of the greenback, were you not?

Mr. STEMPEL. Yes. This again, of course, will bring up one final question.

If I felt so badly about this, why did I not give the money back? I could not see returning it to Daniel Enright.

Mr. ROGERS of Texas. I cannot hear you.

Mr. STEMPEL. I said I could not see returning this to Daniel Enright who, too, was involved in this particular fraud.

Mr. ROGERS of Texas. You mean you felt you had earned it by doing all this work?

Mr. STEMPEL. Yes.

Actually, may I say I was not a quiz contestant in this program, in my opinion. I was an actor, as you probably have noticed by watching the kinescope.

Mr. ROGERS of Texas. You have not given the money back?

Mr. STEMPEL. No, sir.

Mr. ROGERS of Texas. You do not intend to, do you?

Mr. STEMPEL. No, sir; I do not, because I would only have to give it back to Daniel Enright, who perpetrated the fraud to begin with.

Mr. ROGERS of Texas. Do not misunderstand me. I would not blame you at all about that. I would not expect you to give the money back.

How many people on this show, Mr. Stempel, besides you knew what was going on?

Mr. STEMPEL. I would say that, in view of the continuity cards, that Mr. Freedman probably knew that something was amiss. I could not say how much he knew in my particular case. I know Mr. Enright, since I had my dealings with him, definitely knew.

Mr. ROGERS of Texas. What about this fellow that was on the picture that advertised Geritol and the pills?

Mr. STEMPEL. Bob Shepherd is a City College alumnus.

Mr. ROGERS of Texas. No, the fellow who introduced you?

Mr. STEMPEL. Jack Barry?

Mr. ROGERS of Texas. Yes.

Mr. STEMPEL. I would say as a full partner in Barry & Enright, Inc., now known as Production Services, that he was probably apprised of the fact that there was some hanky-panky going on, but due to the fact that he might inadvertently make a mistake, he was not involved as to the exact nature of it because he might accidentally make a mistake.

I remember distinctly on one program, as a matter of fact—this may be slightly peripheral to the whole business—a contestant asked for the three parts and then he changed in the 11-point part of this question.

Mr. ROGERS of Texas. He looked a little worried that you might answer that question right that you were supposed to answer wrong?

Mr. STEMPEL. Actually, this was in the eleventh hour and because I had been so disturbed that day, they were afraid I might "double-cross" them because I wanted to play the game honestly that evening.

Mr. ROGERS of Texas. You think Enright and Barry were the only two that knew about this?

Mr. STEMPEL. Possibly, as I said before, because of the continuity, Freedman. I am not positive. I cannot state with any certainty anybody except Enright. I will not accuse anybody except Enright.

Mr. ROGERS of Texas. Did you ever have any discussions with the man who makes Geritol?

Mr. STEMPEL. Matty Rosenhouse?

I do not know him.

Mr. ROGERS of Texas. Matty Rosenhouse?

Mr. STEMPEL. That is right. R-o-s-e-n-h-o-u-s-e, I believe.

Mr. ROGERS of Texas. Did you meet him in connection with the show?

Mr. STEMPEL. I never met him in my life.

Mr. ROGERS of Texas. When did you first find out he made Geritol?

Mr. STEMPEL. When during the rehearsal session I won an extra amount of dollars and Jack Barry made the crack "this will involve a tremendous amount of tired blood for Matty Rosenhouse."

Mr. ROGERS of Texas. You say you never did try the product?

Mr. STEMPEL. No, sir; I would rather take some reputable product.

Mr. ROGERS of Texas. Mr. Stempel, was there anything that Mr. Van Doren did that would indicate to you that he was in on the entire arrangement insofar as knowing the answers and the questions prior to the time the show began?

Mr. STEMPEL. No, sir.

On the actual production level, once you got into the studio every attempt was made to keep everything on the up and up. Contestants were completely segregated. You went into the make-up situation completely apart. In other words, everything on the surface smacked of complete respectability just as if on another certain program you had two bank guards standing there guarding the vault.

The actual mechanics of the program were unimpeachable. It was completely on the up and up because there was no real need to have any hanky-panky.

I have been asked questions, to-wit: Have answers ever been piped in to you on the earphones? This is one of the questions I have been asked.

Do people light matches in the audience and signal you as to answers, and so forth?

As I have said before, there was no need for this when somebody originates the question and gives you the answer and then it is put through a typist and then sent on to the studio.

Mr. ROGERS of Texas. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Derounian.

Mr. DEROUNIAN. Mr. Stempel, during the period following your receipt of the Enright "treatment," is it true that Mr. Enright was in charge of that program for the other contestants?

Mr. STEMPEL. That is correct, sir.

Mr. DEROUNIAN. Including Mr. Van Doren?

Mr. STEMPLE. That is correct.

Mr. DEROUNIAN. Mr. Van Doren has built himself up as an intellectual giant in the eyes of the American people and is making a lot of money today on Dave Garroway's program telling sweet stories of art, poetry, and compassion for humankind. Is it reasonable to assume, based upon your information, that Mr. Van Doren also got the Enright preparation and treatment throughout these programs he participated in?

Mr. STEMPLE. May I say, sir—I believe you watched the kinescopes and watched the identical actions. I would assume that two gentlemen under pressure do not have the exact same patterns when they are nervous. Some people whom I know pull ears, scratch heads, sneeze, cough, et cetera. When two people bite lips, scratch heads, mop brows, and act identically alike, I would venture to say that the treatment was probably of the same.

Mr. DEROUNIAN. You told your friend, Mr. Janofsky: "You, too, can be smart if you know the answers in advance." Does that apply to Mr. Van Doren, in your opinion?

Mr. STEMPLE. Pardon, sir?

Mr. DEROUNIAN. You told your friend, Mr. Janofsky: "You, too, can be smart if you know the answers in advance," relating to the program and how he was going to answer your question right. Do you think that applies to Mr. Van Doren, too?

Mr. STEMPLE. I must leave it for the committee to decide, sir. I cannot make any accusations. I am just saying what I know to be factual. I will not render an opinion in this particular case.

Mr. DEROUNIAN. Do you feel that Mr. Enright followed the same procedure with the other contestants as he did with you?

Mr. STEMPLE. May I relate a little incident that happened in Longchamps Restaurant in New York? A few days or a few weeks after I went off the program I was talking to Mr. Enright one day, and I happened to make a remark to him in the course of conversation, "You know, ever since I went off the program, took the dive for Charley, he is doing all right now." Whereupon Mr. Enright replied to me, "Oh, no, Charley is playing honestly." That is exactly what the gentleman said to me.

Mr. DEROUNIAN. Mr. Stempel, the reason I point out Mr. Van Doren a little bit is because in the United States we are concerned about education and salutary standards for our children. Here a man is supposedly revered for his knowledge and intellectual capacity. I want to be sure that he is not perpetrating a fraud on the American people and the students who look upon him as a man with knowledge when in fact he was fixed.

Mr. STEMPLE. Let me make two points, sir: No. 1, there was one bit of repartee on the program at one time in which I believe Jack Barry made a quote to the following effect, or essence. I cannot quote this verbatim. That kids are doing their homework now. "Charlie, will you tell the kids to do their homework and behave, because you are looked upon and revered." Also that several of these apotheosis themes, that constantly refer to the man with Lincoln aspects, has furtherance to this particular idea. That is all I can say, sir.

The CHAIRMAN. Mr. Devine.

Mr. DEVINE. I have one question just to clarify the record.

Mr. Stempel, in reply to a question propounded to you by Mr. Lishman generally to the effect, "Has NBC questioned you about this," and your reply was, "Under oath, no," do you mean that they had not questioned you under oath, or are you saying today under oath, "No"?

Mr. STEMPEL. No, I say under oath before this committee that I have never been approached by any representative of NBC in any way, shape or form, or ever asked whether I had any charges to make concerning "Twenty-one."

Mr. DEVINE. That clarifies the question. Thank you.

The CHAIRMAN. Mr. Stempel, you have given some testimony here that certainly reflects a rather unusual situation on the American people. You have been very positive about your testimony. You have made no assumptions. I am glad you did not make any because what we want is to know the knowledge that you have. It is not clear to me just why you decided that you had better reveal the facts and the information regarding this matter when there had been built up a program, I suppose, that was listened to by as many people on television and broadcast facilities as most any program in the history of broadcasting.

Mr. STEMPEL. I will tell you, sir. I just was not myself. I just could not live with myself. In all sincerity, it just bothered me. The fact that I, my friends and relatives, and people who were pulling for me, had let them down, and the whole situation. For example, that Wednesday prior to going on and losing, which I knew I was going to do, NBC was running spot announcements just about every half hour saying the following: "Will Herb Stempel crack the \$100,000 mark tonight?" I was sitting home very, very bluntly and saying, "No, he is not going to crack the \$100,000 mark, because he is going to take a dive tonight." I was really conscience stricken, in all sincerity. It just bothered me and I just could not do my work right. It was something that I had to get off my chest.

The CHAIRMAN. Very well. Mr. Lishman.

Mr. LISHMAN. I have one or two questions. Mr. Stempel, is it correct that there came a time when at the request of Mr. Enright you signed an affidavit to the effect that you had never received any assistance in the "Twenty-one" show program?

Mr. STEMPEL. That is correct, sir.

Mr. LISHMAN. Will you please explain the facts with respect to this affidavit?

Mr. STEMPEL. Very, very bluntly, we had a slight quarrel, because of the fact he had not given me the jobs which he had promised. He told me in effect that if I signed this repudiation and said that his program was honest, we would start on a harmonious basis from there on in, and I would get the jobs which had been promised. In order to get this job which I had been promised, I very simply—and as you know this is written strictly in legal language which I myself composed and never notarized nor signed by any attorney whatsoever.

Mr. LISHMAN. About when was this signed?

Mr. STEMPEL. This was signed to the best of my recollection approximately March 7, 1957.

Mr. LISHMAN. Were the contents of this statement true or false?

Mr. STEMPEL. The contents of that statement are false. Under oath.

Mr. LISHMAN. Now, Mr. Stempel, do you have any personal knowledge that Mr. Van Doren was fixed?

Mr. STEMPEL. Only by the testimony, sir——

Mr. LISHMAN. No; I am asking if you have personal knowledge.

Mr. STEMPEL. No, sir.

Mr. LISHMAN. You have no personal knowledge whatsoever.

Mr. STEMPEL. That is correct, sir.

Mr. LISHMAN. He could very well have answered these questions without coaching?

Mr. STEMPEL. Yes, sir.

Mr. LISHMAN. He is acknowledged, is he not, to be a man of intellectual ability?

Mr. STEMPEL. Yes, sir.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. It is not for you to make any assumptions. If you have no knowledge that he or anyone else has been fixed in connection with these programs, then certainly you should say so, and you have so stated. But did you not also say that you were given precisely the numbers that you were to select on this last show that you were on, and that you knew precisely what the numbers were going to be, and that they were going to be tied, and then played over again, and what the outcome of it was?

Mr. STEMPEL. Yes, sir; I knew that in the seventh week and I also revealed this.

The CHAIRMAN. In other words, you knew that you were going to be tied with Mr. Van Doren at 21 and 21?

Mr. STEMPEL. Yes, sir. I also revealed, as my physician has testified, that I would lose \$20,000, and I told him the score.

The CHAIRMAN. What?

Mr. STEMPEL. I also revealed that I would lose \$20,000 and that I would lose by a score.

The CHAIRMAN. Yes, I know you revealed that. Here is the point. You knew that you were going to be tied for 17 and 17 on that show.

Mr. STEMPEL. Yes, sir.

The CHAIRMAN. Then you knew you were going to be tied for 21 and 21 on that show.

Mr. STEMPEL. That is correct.

The CHAIRMAN. And then you knew you were to lose at a certain point.

Mr. STEMPEL. If I may say so, that is the week before. I believe we are getting our weeks a little mixed up. On the seventh week I was told that I would tie the first game at 17 to 17. In the second game at 21-21. In the third game I was told—I asked what the results would be, and Mr. Enright told me I would be pleasantly surprised. I found another tie. The next week I was told very bluntly I would tie at 21-21 after missing this Marty question. In the second game I would lose by a score of 18 to 10, and lose \$20,000, which I revealed to my physician as he has testified here under oath.

The CHAIRMAN. The important point that seems to be here is, without any assumption whatsoever, and without stating any opinion about it—facts are what we want—you knew that you were going to have 17, as it was shown here, and you knew that Mr. Van Doren was going to have 17, because you were going to be tied.

Mr. STEMPEL. Yes, sir.

The CHAIRMAN. Subsequently thereto you knew that you were going to get 21. You knew he was going to get 21.

Mr. STEMPEL. Yes, sir.

Mr. ROGERS. Will the chairman yield for one observation?

The CHAIRMAN. Yes, sir. I just wanted the facts to be very explicit.

Mr. ROGERS. I think that is a very excellent point.

Mr. Stempel, did you know before you went into the booth what points you were going to choose on each question?

Mr. STEMPEL. Yes, sir.

Mr. ROGERS. There was no signal given to you by anyone as to the number of points after you had entered the booth?

Mr. STEMPEL. No, sir. This had all been discussed on Tuesday afternoon at 1:30 p.m., and reverified again on Wednesday afternoon at 1:30 p.m., 9 hours prior to going on the show.

Mr. ROGERS. So someone must have known what points Mr. Van Doren was going to have?

Mr. STEMPEL. Definitely. Mr. Enright did know if he could tell me there was going to be a tie three times in a row, and also tell me I was going to lose \$20,000, as my physician testified.

Mr. DEROUNIAN. You helped clarify the situation to the extent that it is clear that there was something going on beyond a one-way fix with Mr. Stempel.

Mr. LISHMAN. Mr. Stempel, is it possible that Mr. Van Doren might have been told what number of points to select and that he was not furnished either with the questions or answers?

Mr. STEMPEL. The possibility exists, sir.

Mr. LISHMAN. In other words, the testimony that you have just given to the subcommittee members in no way is to the point that he was given the questions and answers, is that correct?

Mr. STEMPEL. That is correct, sir. I am just saying that I knew the points that he would take and I would take. I do not know if he was apprised of the questions or not.

Mr. LISHMAN. Is it possible, although you have testified to the contrary, that while you were in the booth you may have been receiving signals showing what the points were?

Mr. STEMPEL. No, sir; it is not possible.

Mr. LISHMAN. You mentioned a moment ago that by striking a match in the audience a signal might have been passed to you.

Mr. STEMPEL. That is correct. These are things that people have—

Mr. LISHMAN. Now we are in the realm of possibilities as to Mr. Van Doren's being fixed by being given questions and answers.

The CHAIRMAN. Mr. Moss.

Mr. MOSS. I think on that point we should recall that Mr. Van Doren in this final program won by challenging. He challenged when he had 18 and Mr. Stempel had 10. You lost at that point your \$20,000, and you were eight points behind.

Mr. STEMPEL. That is correct.

Mr. MOSS. You had prior knowledge that this would be the score.

Mr. STEMPEL. That is correct.

Mr. MOSS. The fact that Mr. Van Doren chose to challenge, after each of you had been afforded the opportunity of answering two ques-

tions, would reasonably raise the assumption that he must have had some information because the initiative to supply to you through signals at that point would not have caused Mr. Van Doren to challenge unless he also had knowledge.

Mr. STEMPER. That is right, sir. I would say that was a very, very good assumption.

The CHAIRMAN. Mr. Lishman.

Mr. LISHMAN. Mr. Stempel, inadvertently I said you selected categories in certain of these programs. It is a fact, is it not, that you did not select the categories? That you were told by Mr. Enright what they would be?

Mr. STEMPER. That is right. The categories, as Mr. Enright related to me, worked upon a rotating basis. He would select the categories which were to be given to you each week.

Mr. MOSS. On this matter of when to or when not to challenge during the course of your eight appearances on the program, were you told when to challenge?

Mr. STEMPER. Yes, sir. In fact, I was instructed how to play every single game, and when to challenge.

Mr. MOSS. When you challenged did you have prior knowledge as to what the score of each contestant would be?

Mr. STEMPER. No, sir. I was just told I was going to win. I was told that is exactly what was going to happen.

The CHAIRMAN. Thank you very much for your appearance today.

Mr. SNODGRASS.

Will you be sworn, Mr. Snodgrass. Do you solemnly swear the testimony you give to this committee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SNODGRASS. I do.

The CHAIRMAN. Have a seat, please. State your name for the record.

TESTIMONY OF JAMES SNODGRASS

Mr. SNODGRASS. James Snodgrass.

The CHAIRMAN. What is your address, Mr. Snodgrass?

Mr. SNODGRASS. 295 Eighth Avenue, New York 1, N.Y.

The CHAIRMAN. What is your business or profession?

Mr. SNODGRASS. I am an artist.

The CHAIRMAN. Are you a contestant in the "Twenty-one" show?

Mr. SNODGRASS. I was a contestant; yes, sir.

The CHAIRMAN. Mr. Lishman, do you care to proceed?

Mr. LISHMAN. Yes, sir.

Mr. Snodgrass, when did you first appear on the television show, "Twenty-one"?

Mr. SNODGRASS. April 22, 1957.

Mr. LISHMAN. How long were you on that show?

Mr. SNODGRASS. I was on five times.

Mr. LISHMAN. Five weeks?

Mr. SNODGRASS. Five times over a period of 7 weeks.

Mr. LISHMAN. Were you assisted prior to your appearance on the television show by being given questions and answers that were used on the show?

Mr. SNODGRASS. Yes, I was.

Mr. LISHMAN. On all occasions that you appeared?

The CHAIRMAN. Mr. Lishman, pardon me before we go on. At the outset I think the record should show that Mr. Snodgrass has counsel with him. I think the record should identify the fact that counsel is present. Would you state your name?

Mr. DONT SIN. Michael J. Dontsin.

The CHAIRMAN. Your address?

Mr. DONT SIN. 258 Broadway, New York 7, N.Y.

The CHAIRMAN. You are appearing here as counsel along with Mr. Snodgrass to advise him in accordance with the rules of the House of Representatives?

Mr. DONT SIN. I am, sir.

The CHAIRMAN. Are you familiar with those rules?

Mr. DONT SIN. I am, sir. I just read them again.

The CHAIRMAN. That you are to advise him of his rights, and you are, of course, not to represent him, that is speak for him, or testify for him.

Mr. DONT SIN. I am aware of that, sir.

The CHAIRMAN. Very well, sir. Just so we understand.

Mr. LISHMAN. Mr. Snodgrass, were you assisted by being furnished questions and answers prior to your appearance on the show on any of these performances?

Mr. SNODGRASS. Yes, I was.

Mr. LISHMAN. On how many of them did you receive such assistance?

Mr. SNODGRASS. I received assistance on all except two occasions.

Mr. LISHMAN. All except two occasions?

Mr. SNODGRASS. I had assistance for every occasion, but there were two questions that I was not assisted with.

Mr. LISHMAN. I was coming to that. I was going to ask you whether it was a fact on every program except one. Even there you received assistance.

Mr. SNODGRASS. Even there I had assistance.

Mr. LISHMAN. To clarify the situation, is it not a fact that on every program with the exception of certain questions on two of the programs that you did receive assistance in advance of your appearance on the program?

Mr. SNODGRASS. It is a fact.

Mr. LISHMAN. Now we come to the television show, "Twenty-one", of May 13, 1957. Do you remember appearing on that show?

Mr. SNODGRASS. Yes, I do.

Mr. LISHMAN. Were you furnished the questions and answers that you were to give on that show in advance of your appearance?

Mr. SNODGRASS. Yes, I was.

Mr. LISHMAN. Mr. Snodgrass, is it not a fact that on the occasions when in advance you were given the questions and answers, you would put them in a sealed envelope immediately after receiving them and address them to you at your home address in a registered mail envelope?

Mr. SNODGRASS. That is right.

Mr. LISHMAN. What was your purpose in doing this?

Mr. SNODGRASS. Well, I still haven't explained it to myself. It was just something that I knew maybe some day—that maybe I would have to prove, that I would perhaps say something and I would be called to task for it, and I would have to be able to prove it. I don't know. I just did this to protect myself.

MR. LISHMAN. Now, Mr. Snodgrass, is it not a fact that when you were given these questions and answers in advance, you were instructed to memorize them and immediately destroy them.

MR. SNODGRASS. I was never given anything to destroy. The questions were always read to me.

MR. LISHMAN. Did you type them up immediately?

MR. SNODGRASS. When I would go home, I would then reconstruct the session and send it to myself.

MR. LISHMAN. Now, Mr. Snodgrass, I am going to hand you——

THE CHAIRMAN. Just a moment, Mr. Lishman. Let me get a little more information from him about this.

MR. SNODGRASS, let me see if I understand you correctly. Where would you be when these questions and answers would be given to you?

MR. SNODGRASS. In Mr. Freedman's office at the offices of Barry & Enright.

THE CHAIRMAN. They would present you with the questions there in writing?

MR. SNODGRASS. He read them off a piece of paper. He asked me the questions.

THE CHAIRMAN. He asked you the questions?

MR. SNODGRASS. Yes.

THE CHAIRMAN. You would undertake to answer them at that time?

MR. SNODGRASS. That is right.

THE CHAIRMAN. And if you did not know the answer, he would provide the answer?

MR. SNODGRASS. He provided the answer; yes, sir.

THE CHAIRMAN. Then you would go home?

MR. SNODGRASS. I would go home. He provided the answer and maybe the sequence that they were to be answered in. Then I would go home.

THE CHAIRMAN. You would go home and reconstruct them on the typewriter?

MR. SNODGRASS. In one case longhand, twice on the typewriter, and sent them to myself by registered mail.

THE CHAIRMAN. You are getting a little ahead of me.

MR. SNODGRASS. I am sorry.

THE CHAIRMAN. You would go home and reconstruct them on the typewriter?

MR. SNODGRASS. That is right.

THE CHAIRMAN. Then you would put them in the envelope there?

MR. SNODGRASS. Yes.

THE CHAIRMAN. It would be a registered envelope?

MR. SNODGRASS. It would be mailed registered mail.

THE CHAIRMAN. Addressed to yourself?

MR. SNODGRASS. Addressed to myself.

THE CHAIRMAN. You were in your home then?

MR. SNODGRASS. Yes.

THE CHAIRMAN. Where would you mail them?

MR. SNODGRASS. At that time I lived on West 16th Street. There was a branch post office on West 18th Street.

THE CHAIRMAN. You would take them out of your home where you had reconstructed them, put them in an envelope, address them to yourself, go to a mailbox somewhere and mail them back to yourself?

Mr. SNODGRASS. I went to a branch post office and mailed them back to my place.

The CHAIRMAN. At the place you had left from, your home.

Mr. SNODGRASS. That is right.

The CHAIRMAN. You may proceed.

Mr. SNODGRASS. Pardon me, Mr. Chairman. There was one letter which was mailed from Westport, Conn.

The CHAIRMAN. By yourself?

Mr. SNODGRASS. By myself; yes, sir.

Mr. LISHMAN. Mr. Snodgrass, I am going to hand you a sealed envelope. I don't know the contents in it. I would like to have you first, before opening it, read exactly what there is on the face of this letter and indicate how it was registered and the date and so on, and ask you whether or not it is not addressed to you in your own handwriting? Is it not one of the letters that you mailed as you have just described?

(Document handed to witness.)

Mr. SNODGRASS. The envelope is addressed to Mr. James Snodgrass, 231 West 16th Street, New York, N.Y. The sender's name is J. Snodgrass, 231 West 16th Street, New York, N.Y. It was mailed and registered at the Old Chelsea Station, New York, N.Y., May 11, 1959.

Mr. LISHMAN. Is that one of the letters that you mailed to yourself?

Mr. SNODGRASS. This is one of them; yes, sir.

Mr. LISHMAN. That letter is not opened; is it?

Mr. SNODGRASS. No, sir; it has not been opened.

Mr. LISHMAN. Is there a stamp mark showing the date on the face side of that envelope showing it had been posted May 11, 1957?

Mr. SNODGRASS. Yes. The meter thing from the post office is May 11, 1957, New York, N.Y., 43 cents worth of postage, 415674 is the registry number.

Mr. LISHMAN. Thank you. I will state for the committee that we have the benefit of a police laboratory report of the New York City Police Department that this letter has not been opened, and it has been delivered to us in the same condition as reported by the Police Department of the City of New York. At this time, I would like to ask that this letter be received in the record, following which I would like to have Mr. Snodgrass open that letter and read its contents into the record. I would like to have him do this publicly so all members can see that he is opening an unopened registered letter.

The CHAIRMAN. Mr. Snodgrass, you have just testified that you mailed this letter to yourself?

Mr. SNODGRASS. That is right.

The CHAIRMAN. And you received it?

Mr. SNODGRASS. And I received it.

The CHAIRMAN. Has it been opened to your knowledge since you received it?

Mr. SNODGRASS. To my knowledge, no.

The CHAIRMAN. It is now just as it was when you received it by the postman?

Mr. SNODGRASS. It has two grand jury stamps on the back. Otherwise it is the same.

The CHAIRMAN. Was it opened by the grand jury?

Mr. SNODGRASS. I gather no.

The CHAIRMAN. You may go ahead and open the envelope.

(Witness opens envelope as directed.)

The CHAIRMAN. You may state the contents of it.

Mr. SNODGRASS (reading):

NEW YORK, N.Y., May 10, 1957.

To whom it may concern:

The following are some of the questions, specifically the one I will be asked for the television quiz show "Twenty-one" on the night of May 13 (Monday).

First category: "Movies"—I take 11 points. The question is worth 11 points.

In the story of "Snow White and the Seven Dwarfs," after she is banished from the palace of her stepmother, the Queen, Snow White goes to live in the forest with seven dwarfs. In the Walt Disney version, what were the names of the seven dwarfs?

(I shall answer in this sequence—Sleepy, Sneezzy, Dopey, Happy (pause) the grouchy one, Grumpy (pause) Doc (pause) Bashful.

Second category: "England"—I take 10 points.

What was the name of the ruling houses to which the following monarchs belonged—Richard II, Henry VII, Edward V, George VI?

(I shall answer something like this. Richard II was the last of the Plantagenets; Henry VII was a Tudor. I shall then ask to come back to Edward V. George the Sixth of course was of the House of Windsor. Then I think about Edward V and mention that he was the kid murdered in the Tower of London by Richard III; he was not a Tudor, he was of the House of York.)

That ends the first game with a score of 21. Presumably Bloomgarden and I shall be tied.

The CHAIRMAN. Who was he?

Mr. SNODGRASS. He was the champion and I was the challenger.

The CHAIRMAN. Mr. Bloomgarden.

Mr. SNODGRASS. Bloomgarden. He was the champion and I was the challenger.

First round game 2: "Presidents."

The first President of our country was a President—

I will read it as it is—it doesn't make sense:

The first President of our country was a President as was President Eisenhower. Identify the following Presidents who also were generals. This man won fame by defeating the British at New Orleans during the War of 1812? (I answer correctly—Andrew Jackson.) This general led the American forces at the Battle of Thames in 1813? (I stress the fact that Thames is in Ontario, Canada, also during the War of 1812. William Henry Harrison.) This man enlisted in the army as a private, was appointed a brigadier general and fought with General Scott in capture of Mexico City—(According to the plan of the show I am to miss this question. I am to say "Ulysses S. Grant" which is wrong. The proper answer is "Franklin Pierce." This general defeated Santa Ana at the Battle of Buena Vista? (Zachary Taylor.)

Second round—"The Twenties" (I again try for 11 points since I am at zero.)

The following authors were awarded the Pulitzer prize in the twenties. Name the work for which they received this prize.

Stephen Vincent Benet ("John Brown's Body"), Edna Ferber (for her novel "So Big"), Edith Wharton (for "The Age of Innocence"), Thornton Wilder ("The Bridge of San Luis Rey").

I must say in the dressing room prior to the program there was a change in schedule and I was told not to miss the question but to get it right. So there will be a discrepancy here between what is on this paper and what actually happened.

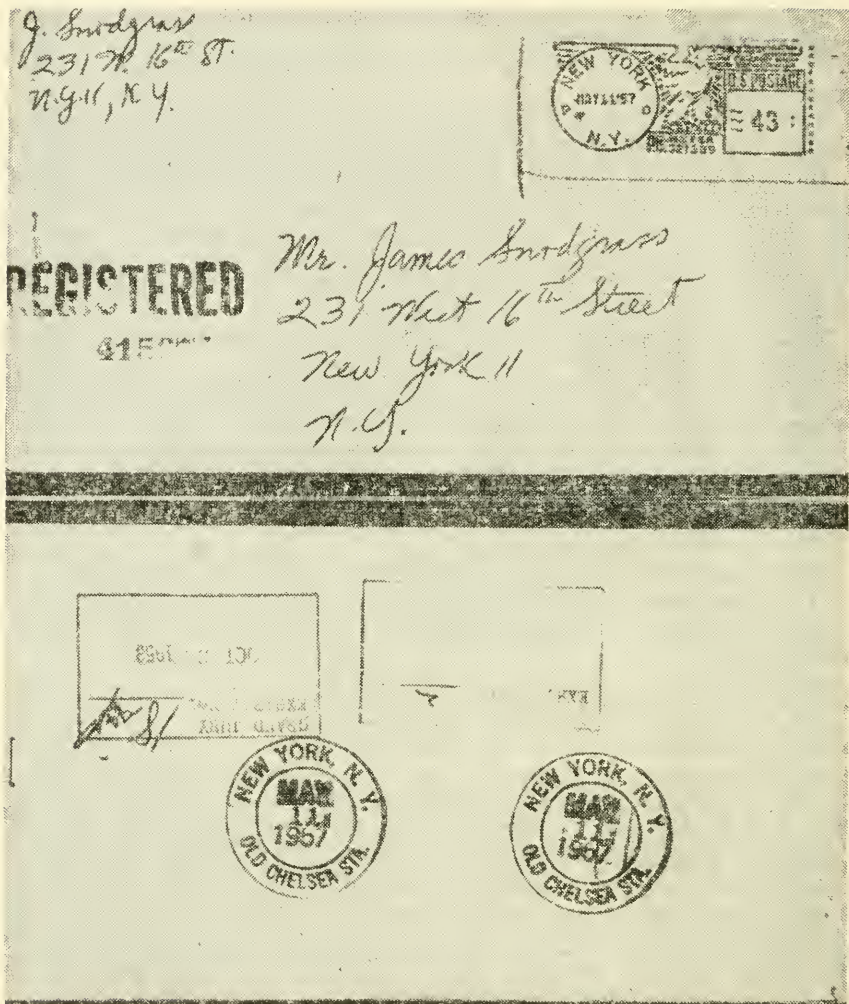
Mr. LISIMAN. Does that complete the reading of that letter?

Mr. SNODGRASS. Except for my signature, James Snodgrass.

Mr. LISIMAN. I would like to have this envelope in the record bearing the registered stamp.

The CHAIRMAN. It is already noted.

(The photostatic reproduction of the envelope follows:)



Mr. LISHMAN. Now I would like to ask to have a kinescopic showing of the television show "Twenty-one" on May 13, 1957, which was 2 days later than the postmark date on the exhibit order that we may ascertain whether or not the contents of this letter are substantially true and correct. I would advise the committee that to my knowledge no one other than Mr. Snodgrass has ever seen this letter or its contents before.

[Showing of kinescope.]

The CHAIRMAN. You may proceed, Mr. Lishman.

Mr. LISHMAN. Mr. Snodgrass, was the kinescopic showing you have just seen an accurate reproduction of the questions and answers that you gave on that program?

Mr. SNODGRASS. Yes, it was.

MR. LISIMAN. Is it a fact that with respect to all of those questions and answers with the one exception, they were contained in the letter that has already been introduced in evidence?

MR. SNODGRASS. Yes, they were.

MR. LISIMAN. I would like to have a transcript made from the tape recording of the sound and incorporate it in the record when it is completed.

THE CHAIRMAN. Without objection, it will be included.

(The transcript referred to follows:)

BARRY. Good evening. I'm Jack Barry. To date here on "Twenty-one" Hank Bloomgarden has won over \$50,000. Because of a series of ties, he must play the next game at \$2,000 a point, which means that in just a few brief minutes he could increase his money winnings to close to \$100,000, or he could lose practically all of it. To learn the outcome let's meet our first two players, as Geritol, the high-potency tonic that helps you feel stronger fast, presents "Twenty-one."

Back for the third week, Mr. James Snodgrass and returning with \$52,500, Mr. Hank Bloomgarden.

Gentlemen, welcome back to "Twenty-one." This is getting to be like old home week. You fellows been on for the past few weeks, been tying each week, and tonight you're going to play for \$2,000 a point. It should be a hum-dinger of a game. Hank, last week on the program you told us of the trip you took to Chattanooga, Tenn., to speak on behalf of the National Association for Mental Health. What did you do this past week?

BLOOMGARDEN. I made a trip on Thursday down to Washington, Jack, to attend Senate hearings on medical research. I was very happy to attend and particularly to run into some Senators I have known for the past couple of years who are doing so much to bolster medical research and to try to expand it in this country. Senator Lister Hill of Alabama, Margaret Chase Smith of Maine, Thyne of Minnesota, John Pastore of Rhode Island; John Fogarty of Rhode Island on the Congress side is doing a wonderful job, too. Something very exciting happened today, though—

BARRY. What's that?

BLOOMGARDEN. Richard Neuberger of Oregon introduced some testimony before this same Senate committee calling for expenditure of half a billion dollars for cancer research. I think this is something which is so wonderful and I wish everybody would get behind it.

BARRY. Well, very well said, Hank, and Jim, your hometown, your neighborhood—is the neighborhood of Washington. We've been talking a little bit about Washington here; aren't you from that part of the country?

SNODGRASS. Well, not exactly in Washington—it's Harford County, Md. See, I grew—grew up on a farm there. My mother teaches school down there now.

BARRY. Your mother teaches school? Hank, your mother teaches school too; doesn't she?

BLOOMGARDEN. Yes; my mother teaches school, too. Right.

BARRY. There must be a moral in this some place. I don't know what it is. We'll get the moral in just a moment. Gentlemen, we are about to play "Twenty-one." Please remember, it's at \$2,000 a point. Hank, you stand to win or lose—it's possible you could win or lose, \$42,000, which means you could be almost completely wiped out or you could run it up to almost \$100,000. And there's a lot at stake for you, too, Jim, so fellows, what do you say—let's play. Take your places in the studios, don't forget to put on the earphones, and good luck to both of you.

Neither player inside the studios can hear anything until I turn their studios on, they can't see anybody in the studio audience or hear the studio applause. I'm going to turn both studios on right now. Can you hear me all right, Hank?

BLOOMGARDEN. Very well, thank you.

BARRY. How about you, Jim?

SNODGRASS. Very good.

BARRY. All right, gentlemen, get yourselves relaxed as much as you can, calm down a bit, and we'll get on with the game in just a moment.

Friends, I was just wondering, before we get started, what kind of a day did you have today. Did you start the day with plenty of get up and go, your

energy on the rise, something like this—only to find that somewhere in the middle of the day your energy began to run downhill, like this—well, remember, if you feel tired and run down your trouble may be due to what doctors call iron deficiency anemia. And as you all know I'm sure by now, we call it tired blood. Check with your doctor, and when tired blood is your problem, to feel stronger fast, you take Geritol, the high-potency tonic, that begins to strengthen tired blood in only 24 hours. Take Geritol liquid or you can take the tablet form. Take it every day—you'll feel stronger fast, within 7 days, or you get your money back—and, mothers, after sickness, help your child gain strength fast. Give him Geritol, Jr., the ideal tonic for growing children.

BARRY. And, now, on with our game. Hank Bloomgarden, I, you're—you have it all at stake tonight at \$2,000 a point. I'm going to turn your studio off the air, and I'll get back to you in a moment. Jim, you have a great deal at stake—you can win an awful lot of money here tonight. I think you know how to play the game, we'll skip the explanation—the first category is called "Movies and Movie Stars"—you grade yourself, from 1 to 11. How many points do you want to try for?

SNODGRASS. I'll take 11.

BARRY. That's our hardest question—I assume you know a great deal about the movies.

SNODGRASS. I do.

BARRY. Here is your question, for 11 points. When Snow White was banished from her home in the queen's castle, she was helped by seven dwarfs. What were the names of the seven dwarfs in the Disney version of "Snow White and the Seven Dwarfs"?

SNODGRASS. Uh, there was Sleepy.

BARRY. That's one.

SNODGRASS. One. Sneezzy.

BARRY. That's two.

SNODGRASS. Ah, Dopey.

BARRY. That is three.

SNODGRASS. Ah, Happy.

BARRY. Four. You've got three to go.

SNODGRASS. Um, there was the grouchy—ah, Grumpy.

BARRY. Grumpy is right. You've got five of 'em. Two to go.

SNODGRASS. Um—the head guy—ah—Doc.

BARRY. That is right—you've got six of 'em. For a full 11 points give me one more.

SNODGRASS. Um, Bashful.

BARRY. That's right, and you've got a full 11 points. You're off to a flying start, Jim Snodgrass, and I'll get back to you in just a moment. Hank Bloomgarden, defending your \$52,500, at \$2,000 a point—the category is "Movies and Movie Stars." How many points do you want to try for?

BLOOMGARDEN. I'll try for 10 points, please.

BARRY. For 10 points—one of our more difficult questions. Tell us the names of the actresses who played the title roles in the following movies. One, "Jezebel," released in 1938; two, "That Hamilton Woman," released in 1941; three, "Mildred Pierce," released in 1944; four, "Major Barbara," released in 1941, and finally, "All About Eve," released in 1949. For 10 points—shall we take them from the top?

BLOOMGARDEN. Yes, please.

BARRY. First, "Jezebel," released in 1938.

BLOOMGARDEN. "Jezebel," Jezebel was played by Bette Davis.

BARRY. That's correct. Second, "That Hamilton Woman," released in 1941.

BLOOMGARDEN. "That Hamilton Woman" starred—ah—Vivien Leigh.

BARRY. Right. Third, "Mildred Pierce," released in 1944.

BLOOMGARDEN. "Mildred Pierce" starred Joan Crawford.

BARRY. Correct. You've got three of them. You have 2 to go for 10 points. Fourth, "Major Barbara," released in 1941.

BLOOMGARDEN. Oh, the new O'Neill play—wait a minute—Wendy Hiller—Wendy Hiller.

BARRY. That is correct. You've got four of them, you need one more. The picture, "All About Eve," released in 1949.

BLOOMGARDEN. "All About Eve"—Betty Davis starred in that, also Anne Baxter—Eve was played by Anne Baxter.

BARRY. You're right—for a full 10 points. I'll get back to you in just a moment.

Jim Snodgrass, you have 11 points. The category is England—England. How many points do you want, from 1 to 11.

SNODGRASS. I'll try for 21—I'll take 10.

BARRY. For 10 points, which if answered correctly would give you 21—even if you answer correctly, Jim, you'll have to wait because Hank Bloomgarden has one turn still to go. Because you're trying for 21, if you need some extra time you can have it. Here is your question for 10 points. The following are the names of kings famous in the history of England. Tell us to what ruling family each belonged. First, Richard the Second; second, Henry the Seventh; third, Edward the Fifth; and fourth, George the Sixth. Do you understand the question?

SNODGRASS. Uh, that's Richard the Second?

BARRY. Richard the Second, yes.

SNODGRASS. Right.

BARRY. Do you understand it now? All right. Want some extra time to think it over?

SNODGRASS. Please.

BARRY. All right. Think it over—I'll tell you when your time is up.

Your time is up. For 10 point, which would give you 21—but remember Hank Bloomgarden still has a turn to go—I want you to tell us to what ruling family each of the following kings belonged. First, Richard the Second.

SNODGRASS. Richard the Second was the last of the Plantagenets.

BARRY. Correct. Second, Henry the Seventh.

SNODGRASS. Ah, he was in the House of Tudor.

BARRY. That is correct. You've got half of them. Two more to go for 21 points. Edward the Fifth.

SNODGRASS. Um, let's get the other one out of the way.

BARRY. All right. That would be George the Sixth.

SNODGRASS. Um, he's the House of Windsor.

BARRY. That is correct. You need one more for 21 points. Edward the Fifth.

SNODGRASS. Um—he was the—ah—the kid that was murdered by Richard the Third in the Tower of London. Ah—ah—no, he wouldn't be a Tudor—ah, he's of the House of York.

BARRY. That's right, and you've got 21 points. Now, Jim Snodgrass, you have 21. We're gonna see what's going to happen—I'm going to allow you to listen—please do not divulge your score.

Hank Bloomgarden, you have 10 points. The category is England—how many points do you want, from 1 to 11?

BLOOMGARDEN. I'll try for 21, Jack. Eleven points, please.

BARRY. You want to go all way and try for 21?

BLOOMGARDEN. Right.

BARRY. I can tell you now. Your opponent already has scored 21 points, Hank, which means that if you answer your question correctly, we will have another tie, and we'll have to play another game—this time at \$2,500 a point. If you miss, you will be back down to zero, and you will lose \$42,000. So think this over very, very carefully. Here is your question for 11 points. Because you're trying for 21, if you need some extra time of course you can have it. Name the men who were Prime Ministers when the following important events in English history occurred: First, when the new country of Ghana officially became a self-governing member of the British Commonwealth of Nations; second, when Edward the Eighth abdicated the throne of England; third, when for the first time a queen of England became Empress of India; and fourth, when a treaty was signed giving part of Ireland the status of Free State. Do you understand all the question, Hank?

BLOOMGARDEN. I, I understand it, but can you repeat the first two parts, please?

BARRY. The first two parts? Yes. I want you to name the men who were Prime Ministers when these events took place. First, when the new country of Ghana officially became a self-governing member of the British Commonwealth of Nations; and second, when Edward the Eighth abdicated the throne of England. Got it all straight, now? Want some time to think it over?

BLOOMGARDEN. Please.

BARRY. OK, Hank, a lot's riding on it. Good luck to you.

All right, Hank, your time is up and here it is. For 11 points, which would give you 21 and another tie or if missed would put you back down to zero and cost you \$42,000. I want you to name the men who were Prime Ministers when the following important events in English history occurred. First, when the

new country of Ghana officially became a self-governing member of the British Commonwealth of Nations.

BLOOMGARDEN. Ghana. Ghana recently became a member of the Commonwealth, so the Prime Minister would be the present Prime Minister of Britain—that's Harold Macmillan.

BARRY. That's correct. You've got one. Two, when Edward the Eighth abdicated the throne of England.

BLOOMGARDEN. Edward the Eighth abdicated in 1936—the Prime Minister then was—Stanley Baldwin.

BARRY. That is right. You've got half of them. Two more to go. For another tie. Or if missed, the inevitable. When for the first time a queen of England became Empress of India.

BLOOMGARDEN. The first queen of England to become Empress of India was—Queen Victoria. The Prime Minister who was responsible for that move was Disraeli.

BARRY. That's right. Fourth, when a treaty was signed giving part of Ireland the status of Free State.

BLOOMGARDEN. Ireland became a Free State—the Irish Rebellion I know took place during the Second World War. First World War. I'm not sure—

BARRY. At a time like this I don't want to press you for an answer, too much is at stake, Hank, but take a few seconds more and then I will have to call for your answer.

BLOOMGARDEN. Wasn't it—wasn't it Lloyd George?

BARRY. I'll—I'll have to call for a declarative statement, rather than one of questioning, Hank.

BLOOMGARDEN. I'll say it was Lloyd George—Lloyd George.

BARRY. You'll say right, and you've got 21 points.

Gentlemen, 1—Jim, you heard it as well as I did—I don't have to explain it to you. Hank successfully answered the question—you both ended up with 21 points, and we have another tie game. Now fellows, I think you both know what we do in the case of a tie—we take off the 21 points, we start a brand new game, but this time we'll be playing for \$2,500 a point. Let me figure it up roughly what one of you could win or lose. Twenty by—well, it's almost—it's over \$50,000. So fellows at this point I think you both need to relax. Will you do that? Simmer down a second. We'll get playing this next game for over \$50,000 in just a moment.

While they're relaxing, if they can, if those of you at home have been wanting to take off weight, here's the sensible way to really slim down. Watch how you can lose weight, yet eat plenty.

ANNOUNCER. What's the best way to reduce—eat what you want, or starve yourself? Leaving the table with a full stomach, or an empty one? Empty stomach? Wrong. A half empty stomach causes hunger tantrums, makes you nibble between meals, probably stuff yourself at your next meal. That's why rigid starvation diets are not only dangerous but usually don't work. Now with the RDX plan you fill your stomach, avoid hunger tantrums, lose weight naturally and fast. The RDX plan includes a scientific, clinically tested formula that helps you cut down your craving for fattening foods while you fill your stomach with what you need, suffer no hunger tantrums. You lose as many pounds as you wish or money back. And new pleasant-tasting RDX tablets are safe, contain no dangerous drugs, no hormones—so lose ugly fat fast with RDX, full-stomach reducing plan. Get RDX at your drugstore today.

BARRY. I'd say that was mighty good advice to follow, wouldn't you? Remember, if you want to lose weight, try RDX.

Incidentally, all questions used on "Twenty-one" have been authenticated for accuracy and order of difficulty by the editorial board of the Encyclopedia Britannica. Also, our gratitude to the publication TV Radio Life for voting "Twenty-one" the best quiz program on television. Thank you very much.

All right, gentlemen—here we go again. Two thousand five hundred dollars a point—I've been informed from the people at the side here that, Hank, \$52,500 is at stake. If you should lose by a score of 21. On the other hand, if you should win you'll be over \$110,000—\$104,000—or \$105,000. So, both of you take it easy. I'll get back in just a moment.

Jim, of course all of this applies to you too—I don't mean to neglect you at all—you have—you could win \$52,000, so play very carefully.

The category is Presidents of the United States. How many points do you want from 1 to 11?

SNODGRASS. I'll take 10.

BARRY. For 10 points, identify the Presidents during whose presidential campaigns the following slogans were used. First, "A Chicken in Every Pot, A Car in Every Garage," used in the campaign of a former Secretary of Commerce; second, "He Kept Us Out of War," third, "A Full Dinner Pail," the slogan of a man who was reelected after leading the Nation through the Spanish-American War; fourth, "A Public Office is a Public Trust," the slogan of the man who as President had to deal with the panic of 1893, and fifth, "Tippecanoe and Tyler Too." Shall we take it from the top?

SNODGRASS. Yes.

BARRY. First, the Presidents during whose presidential campaigns the following slogans were used. First, "A Chicken in Every Pot, A Car in Every Garage," used in the campaign of a former Secretary of Commerce.

SNODGRASS. Uh—I would say that is—ah—Herbert Hoover.

BARRY. You would say right. Got the first part. Second, "He Kept Us Out of War."

SNODGRASS. Ah—that would be Woodrow Wilson.

BARRY. That also is correct. Three, "A Full Dinner Pail," the slogan of a man who was reelected after leading the Nation through the Spanish-American War.

SNODGRASS. Well, that has to be William McKinley.

BARRY. It is indeed. You've got 3 of them; you need 2 more to go for a full 10 points.

Fourth, "A Public Office Is a Public Trust," the slogan of a man who, as President, had to deal with the panic of 1893.

SNODGRASS. Ah—that is Grover Cleveland.

BARRY. Correct. You need one more. "Tippacanoe and Tyler Too."

SNODGRASS. Ah—"Tippecanoe and Tyler Too"—was William Henry Harrison.

BARRY. You're right and you've got a full 10 points. I'll be back to you in a moment.

Hank Bloomgarden, \$52,500 at stake, at \$2,500 a point. That's an awful lot. The category, "Presidents of the United States." How many do you want to try for from 1 to 11?

BLOOMGARDEN. I'm giving this some thought. I'll try for 10 points, Jack.

BARRY. For 10 points, identify the Presidents during whose presidential campaigns the following slogans were used: First, "A Chicken in Every Pot, a Car in Every Garage," used in the campaign of a former Secretary of Commerce; second, "He Kept Us Out of War"; third, "A Full Dinner Pail," the slogan of a man who was reelected after leading the Nation through the Spanish-American War; fourth, "A Public Office Is a Public Trust," the slogan of the man who, as President, had to deal with the panic of 1893; and fifth, "Tippecanoe and Tyler Too." That's the question for 10 points. Shall we take it from the beginning?

BLOOMGARDEN. A Chicken and Tippecanoe, very familiar.

BARRY. We'd better—we'd better take it right from the start; all right?

BLOOMGARDEN. Please, yes.

BARRY. The first part—"A Chicken in Every Pot, a Car in Every Garage" used in the campaign of a former Secretary of Commerce.

BLOOMGARDEN. That was—that's associated with Herbert Hoover.

Mr. BARRY. Is that your answer?

BLOOMGARDEN. "A chicken in every car—uh.

BARRY. "A Chicken in Every Pot."

BLOOMGARDEN. Yes—You can see what this is doing to me—

BARRY. All right. You've got the first part—don't press yourself any further. Second, "He kept us out the dinner pail—no—"He kept us—Hank, take a moment here—second, "He Kept Us Out of War."

BLOOMGARDEN. "He Kept Us Out of War." That's, that's—ah—Woodrow Wilson.

BARRY. That's correct—

BLOOMGARDEN. Before we go into the war—

BARRY. Third, third—now, let's get serious here because there's an awful lot of money at stake. Third, "A Full Dinner Pail," the slogan of a man who was reelected after leading the Nation through the Spanish-American War.

BLOOMGARDEN. "A Full Dinner Pail," that was—that's known with President McKinley.

BARRY. Correct. Fourth, "A Public Office Is a Public Trust," the slogan of the man who, as President, had to deal with the panic of 1893.

BLOOMGARDEN. That's Grover Cleveland.

BARRY. You've got four parts correct. For your full 10 points, tell me now—"Tippecanoe and Tyler Too."

BLOOMGARDEN. "Tippecanoe and Tyler Too," well, Tippecanoe was the nickname for President William Henry Harrison, so that would be William Henry Harrison. William Henry Harrison.

BARRY. You're right. And you've got a full 10 points.

Jim Snodgrass, you have 10 points. The category is "The Twenties"—"The Twenties"—I'm going to have to ask you to speed up a little bit, Jim—and how many points do you want from 1 to 11?

SNODGRASS. I have 10, I'll try for 21. Give me 11.

BARRY. Eleven points—if you need some extra time on this, of course you can have it. I will name five writers who won the Pulitzer Prize in Letters during the twenties—you tell us for what work each won. First, Stephen Vincent Benet; second, Elmer Rice; third, Edna Ferber; fourth, Edith Wharton; fifth, Thornton Wilder. Understand the question all right?

SNODGRASS. Yes, I think so.

BARRY. Want some time to think it over?

SNODGRASS. Please.

BARRY. All right. Please remember if you answer correctly, Hank still has one turn to go. I'll tell you when your time is up. Good luck, Jim Snodgrass.

Your time is up. For a full 11 points, which would give you 21, I'll name 5 writers who won the Pulitzer Prize—you tell us for what work each won; Stephen Vincent Benet.

SNODGRASS. Ah, Stephen Vincent Benet—ah, that would be for his poem "John Brown's Body."

BARRY. Correct. Elmer Rice.

SNODGRASS. Elmer Rice—ah, for his play "Street Scene."

BARRY. Correct. Edna Ferber.

SNODGRASS. Uh, that was her novel, ah—"So Big."

BARRY. That is right. Fourth, Edith Wharton.

SNODGRASS. Edith Wharton. "The Age"—"The Age of"—ah—"Innocence."

BARRY. Correct. One more, which would give you 21 points again. Thornton Wilder.

SNODGRASS. Would that be for "The Bridge at San Luis Rey"?

BARRY. I will have to ask for a declarative statement, rather than a question.

SNODGRASS. Well, then it was for—ah, "The Bridge at San Luis Rey."

BARRY. You're right—and you've got 21 points again. I'm going to let you listen now, Jim, but don't divulge your score—OK?

Hank Bloomgarden, you have 10 points. The category is "The Twenties." How many points do you want from 1 to 11?

BLOOMGARDEN. Jack, I'll take the plunge, I'll try for 21.

BARRY. You'll try 11 points.

BLOOMGARDEN. That's right.

BARRY. I can tell you now—your opponent already, once again, has 21 points. If you answer correctly, we'll have—we'll have another tie. If you miss, Hank, if you miss, you will lose \$52,500 and will be completely wiped out. Here is your question. If you need some extra time you can have it. I'm going to name five writers who won the Pulitzer Prize in Letters during the twenties. Tell us for what work each won. First, Stephen Vincent Benet; second, Elmer Rice; third, Edna Ferber; fourth, Edith Wharton; fifth, Thornton Wilder. Understand the question? Want some time to think it over?

BLOOMGARDEN. Would you, could you please repeat those?

BARRY. Yes. Stephen Vincent Benet, Elmer Rice, Edna Ferber, Edith Wharton, and Thornton Wilder. Want some time—extra time, Hank?

BLOOMGARDEN. Please.

BARRY. I'll tell you when your time is up, and good luck to you.

For 11 points, which would give you 21 and another tie, or if missed would cost you the entire amount of money you've already won. I'll name five writers who won the Pulitzer Prize in Letters. You tell me for what work each won. First, Stephen Vincent Benet.

BLOOMGARDEN. Stephen Vincent Benet won for his poem, "John Brown's Body."

BARRY. Correct. Elmer Rice.

BLOOMGARDEN. Elmer Rice. He won for his play "Street Scene."

BARRY. That is correct. Third, Edna Ferber.

BLOOMGARDEN. Edna Ferber. Can I come back to that please, Jack?

BARRY. Yes, you can. Edith Wharton.

BLOOMGARDEN. Edith Warton. She won—ah—ah—the novel, "The Age of Innocence."

BARRY. Correct. Thornton Wilder.

BLOOMGARDEN. Thornton Wilder. With his—ah—his novel, "The Bridge at San Luis Rey."

BARRY. You've got four of them. If you give me one more there'll be another tie. We'll play another game at \$3,000 a point. If you miss it, you'll lose \$52,500. Edna Ferber.

I hate to press you, but our time is running out, Hank.

BLOOMGARDEN. I'll say it was her novel "So Big."

BARRY. You're right—you have 21 points.

Fellows, our time's running out—see you next week for \$3,000 a point. Good-night, Jim. Goodnight, Hank. I'll be back in a minute with an important message about one of our other sponsor's five products. Here it is, right here.

ANNOUNCER. If you ever walk the floor at night, unable to fall asleep, your nerves on edge, try the effective new aid to sleep that relaxes you and helps you fall asleep gently. It's called Somnex. The next time you can't sleep, take Somnex, as directed, for 100 percent safe sleep. Somnex contains no narcotics, no barbiturates, no bromide, and it's nonhabit forming. What's more, Somnex's combination of special ingredients helps calm down jittery nerves, helps you feel more relaxed. So if you ever can't sleep, take Somnex as directed for natural-like sleep with 100 percent safety. In the morning you wake up refreshed, without morning-after grogginess. Get Somnex at your drugstore; no prescription needed. It's new, it's effective, it's Somnex. Take as directed for 100 percent safe sleep.

BARRY. Remember what I told you about Geritol, man; and be with us next week at \$3,000 a point. It'll be the biggest game we ever had on this program. Goodnight everybody and thank you for being with us. Goodnight.

Mr. LISHMAN. Mr. Snodgrass, could you tell the subcommittee the events which led up to your becoming a contestant on "Twenty-one."

Mr. SNODGRASS. In March of 1957 I returned from a trip to Europe and I was looking for work. I needed some money. I had been looking for a job. I met a friend that I had known in Europe and he had been watching these quiz programs and he had himself tried to get on and had not made it but he suggested that I try it.

So I went to the offices of Barry & Enright and asked to take the test for "Tic-Tac-Dough." He had told me that this was the preliminary step. So I took the test for "Tic-Tac-Dough." They told me that they would call me, for me not to call them. I just assumed that was it.

A few days later—it was within a week—I got a letter from a Miss York of Barry & Enright, would I please call her. So I called her. She said that I had done so well in the test for "Tic-Tac-Dough" would I be interested in taking the test for "Twenty-one"?

I said certainly. I know that the consolation prize on "Twenty-one" was \$500. On "Tic-Tac-Dough" it was a wristwatch. I called to make an appointment to take the test for "Twenty-one" and was told to allow several hours for it. I made an appointment to go in the next day and take the test. I did.

It was a 363-question test which took several hours. I was interviewed at this time by a Mr. Bob Rubin. Again they told me that we will get in touch with you.

Two or three days later I was called. They asked me to make an appointment to see a Mr. Albert Freedman. I did, which was to be, I think, for Tuesday of the next week. I went to see Mr. Freedman.

Mr. LISHMAN. Just a minute. Will you please identify for the record who Mr. Freedman is?

Mr. SNODGRASS. Mr. Freedman, at the time I was on the show, was the producer of the show.

Mr. LISHMAN. He was employed by Barry & Enright?

Mr. SNODGRASS. He was employed by Barry & Enright, so I had my appointment with Mr. Freedman and we discussed various things. It was all conversation. I left there feeling that I had done very poorly—I am not a good interviewee—thinking that is the last I'll hear of this.

Later that week—I had seen him on Tuesday—I think it was on Friday he called me, would I please come in and be a standby for the program the following Monday. I went in and reported to studio 6-B as he had asked me to. I was made up.

He came into the dressing room that I was in and told me that my appearance there that night did not mean that I would automatically become a contestant on the show and he thanked me for coming. That I was to do—as things were suggested, we would have the dress rehearsal and so forth, and if they ran through the other contestants, all of whom were ahead of me, I would then be on the show. We had the dress rehearsal and I sat through that show in the wings.

Then I didn't hear from Mr. Freedman for the remainder of that week. I think it was probably Monday afternoon I called him and asked him if he wanted me to be a standby again. He said "No." I was not on that Monday night. Then later that week he called me again and asked me to come into his office, which I did.

He told me that I would definitely be on the following Monday. I had looked good in the dress rehearsal which I imagine they watched through monitors. He suggested I have my teeth cleaned and to wear an off-white shirt, not a white shirt.

It was at this time I think, that—it was either this time or the appointment I had with him for the next day—where he told me what the questions and answers were to be for the first show.

Mr. LISHMAN. Did he take you to Mr. Enright at this time?

Mr. SNODGRASS. Yes. I was also taken into Mr. Enright's office and introduced to Mr. Enright. We had a long conversation in Mr. Enright's office on very general topics.

Mr. LISHMAN. Could you tell the committee what happened at this interview between you and Mr. Freedman while Mr. Enright was present?

Mr. SNODGRASS. We talked, as I said, on many things. Like who were my favorite television comedians. Did I like comedy or did I prefer tragedy. He asked me what parts of the country I had lived in. I had gone to school in Cleveland. He said fine. I was from Maryland. That meant the Baltimore and Washington newspapers would be interested. They were looking for press coverage.

Mr. LISHMAN. Did you afterward have a subsequent meeting with Mr. Freedman alone?

Mr. SNODGRASS. Yes.

Mr. LISHMAN. Could you tell us what happened at that meeting?

Mr. SNODGRASS. I went into his office and he took some papers out of the desk drawer and said I will ask you some questions, which he proceeded to do, to see how well I could answer them. Then, after I had answered a series of questions, he said "These are the questions that are to be used on Monday night."

Mr. LISHMAN. Monday night of what date?

Mr. SNODGRASS. This would be April 22.

Mr. LISHMAN. Was that your first appearance, April 22?

Mr. SNODGRASS. This was my first appearance; yes, sir.

Mr. LISHMAN. 1957?

Mr. SNODGRASS. 1957.

Mr. LISHMAN. Before I go along with what went on between you and Mr. Friedman, I would like to ask, when you applied to become a contestant, did you do so in the belief that you were to be a participant in an honest contest of knowledge?

Mr. SNODGRASS. Yes, I think so. Yes.

Mr. LISHMAN. At the time of making your application and before you saw either Mr. Freedman or Mr. Enright, did you have any reason to suspect that these shows were fixed?

Mr. SNODGRASS. No; none whatsoever.

Mr. LISHMAN. You did not believe them to be fixed?

Mr. SNODGRASS. No.

Mr. LISHMAN. Did Mr. Freedman explain to you why he was giving you the questions and answers in advance?

Mr. SNODGRASS. Yes. He told me that he was giving me these questions and answers so that I would be at ease on the program and not make a fool of myself.

Mr. LISHMAN. Did he tell you how many games you would play when you first appeared?

Mr. SNODGRASS. No. I knew that I would not lose or miss out that first night, that I was on the program.

Mr. LISHMAN. Did he indicate to you at that meeting that after the first night he would continue to give you questions and answers?

Mr. SNODGRASS. No; I don't think he did.

Mr. LISHMAN. Did you appear on that program on April 22, 1957?

Mr. SNODGRASS. Yes, I did.

Mr. LISHMAN. Were the questions and answers that were asked of you and the answers given by you the same as those that had been previously supplied by Mr. Freedman?

Mr. SNODGRASS. Yes; that is right.

Mr. LISHMAN. After you appeared on April 22, 1957, for the first time, did you have lunch with Mr. Freedman?

Mr. SNODGRASS. Yes; I had lunch with him the next day.

Mr. LISHMAN. Where did you have lunch?

Mr. SNODGRASS. Is it the Red Horse Inn on East 58th Street in New York. I think it is that. It is either the Red Horse or the Red Coach. I am not sure.

Mr. LISHMAN. Could you state the conversation that took place between you and Mr. Freeman at that luncheon meeting?

Mr. SNODGRASS. Well, again we discussed a wide variety of subjects. I do not think we really discussed the television show itself very much except that I had done very well—except that I had hurried too much. In my next appearance I should be more relaxed and more at ease and not to answer as quickly and take more time and be more relaxed about it.

Mr. LISHMAN. Did you ever meet a TV columnist with Mr. Freedman?

Mr. SNODGRASS. Yes, I did.

Mr. LISHMAN. What happened at that meeting?

Mr. SNODGRASS. There was going to be a week layover for a spectacular which occupied this spot on the network for the next week.

So they were using this as a holdover. They had this TV columnist in. They were going to bill it like a sports match of Bloomgarden versus Snodgrass, or Snodgrass challenging Bloomgarden, as if it were going to be a boxing match.

Mr. LISHMAN. Before you had that interview with the press agent, did you have a meeting with Mr. Freedman?

Mr. SNODGRASS. Yes.

Mr. LISHMAN. What was your conversation about with Mr. Freedman?

Mr. SNODGRASS. We probably, or we did arrange questions and rehearse them for the following Monday night.

Mr. LISHMAN. Was that the first time you knew you would appear on subsequent shows?

Mr. SNODGRASS. Yes. I had also been told at this interview that they had decided to have a series of ties between me and Mr. Bloomgarden.

Mr. LISHMAN. Did he explain why he wished the series of ties?

Mr. SNODGRASS. Well, that it would be good for building the popularity or the rating of the show. I was also told at this time that Mr. Bloomgarden knew of this and it was agreeable with him.

Mr. LISHMAN. Did you observe when you were being rehearsed or assisted in these programs that use was made of a stopwatch in order to make certain that the program would conform to a time schedule?

Mr. SNODGRASS. Yes, the stopwatch was used in every case. The counts and everything was timed.

Mr. LISHMAN. Were you timed even as to the exact seconds which you would hesitate before giving an answer?

Mr. SNODGRASS. That's right, yes, sir.

Mr. LISHMAN. Now, Mr. Snodgrass, did there come a time that you were appearing on this contest that you were supposed to lose?

Mr. SNODGRASS. Yes. There came a time when I was supposed to lose.

Mr. LISHMAN. Will you tell us when that was?

Mr. SNODGRASS. That would have been the night——

Mr. LISHMAN. Was it May 28, May 20?

Mr. SNODGRASS. May 20th would have been; yes, sir. There was no program on May 28.

Mr. LISHMAN. Would you explain just how you were supposed to lose and who instructed you to lose?

Mr. SNODGRASS. Mr. Freedman instructed me to lose. It was to be a question, I should imagine it was English literature, quotations, or American literature perhaps.

Mr. LISHMAN. At this point, Mr. Snodgrass, I would like to hand you a paper and ask you to identify it and read it into the record.

Mr. SNODGRASS. "May 17, 1957." I am sorry, Mr. Lishman. Do you want me to identify it?

Mr. LISHMAN. Yes, I would like you to identify it and tell us what it is.

Mr. SNODGRASS. This letter is a letter that I wrote to myself after being coached by Mr. Freedman. This was in a registered envelope. It was written on May 17, before my appearance on May 20:

May 17, 1957, 231 West 16th Street—

Mr. LISHMAN. Just before you read it, is this one of a series of letters which you wrote to yourself in advance of appearing on the show wherein you stated the questions and answers that were given to you prior to your appearance?

Mr. SNODGRASS. It is, sir. (Continuing:)

To Whom It May Concern:

The following are the questions for the first game on the television quiz program to take place at 9 o'clock Monday evening, May 20, 1957.

Round 1: Category "American Literature," 11 points:

Identify the major American poets who wrote the following lines of poetry: "I hear America singing . . . the varied carols" (Walt Whitman); "Fog comes in on little cat feet" (Carl Sandburg); "Hope is a thing with feathers, it whispers to the soul" (Emily Dickinson); "I shot an arrow in the air, where it fell I know not where" (Henry Wadsworth Longfellow).

Round 2: Category "The Armed Forces," 10 points:

Where are the present academies of the following branches of the United States Armed Forces: Army (U.S. Military Academy at West Point, N.Y.); Navy (U.S. Naval Academy at Annapolis, Md.); Coast Guard (The Coast Guard Academy is at New London, Conn.); Merchant Marine (King's Point, Long Island); Air Corps (While the Air Corps Academy is being constructed at Colorado Springs the present academy is in Denver, Colo.).

According to the plan I am to miss the first question, specifically the lines by Emily Dickinson. I've been told to answer Ralph Waldo Emerson. I have decided not to "take the fall" but to answer the question correctly.

JAMES SNODGRASS.

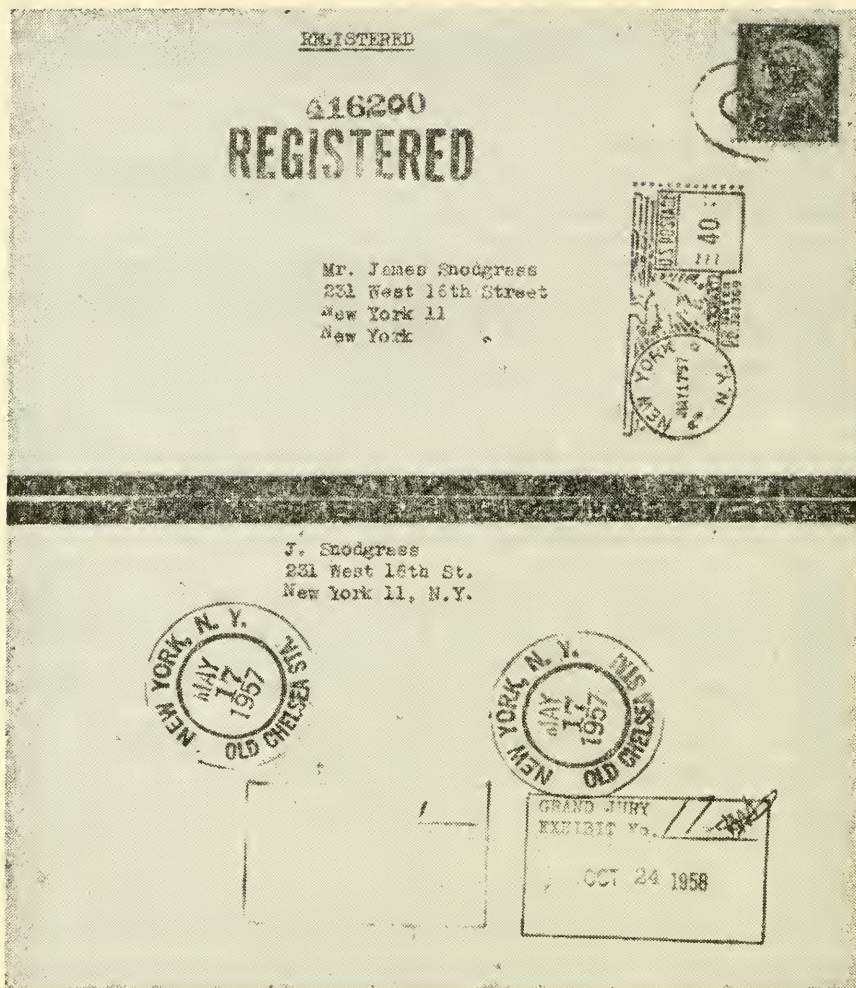
Mr. LISHMAN. Mr. Chairman, I would like to have a copy of this letter made a part of the record. I would like to have the envelope.

The CHAIRMAN. He just read the letter into the record.

Mr. LISHMAN. I would like to have the envelope in which this letter was sent to himself.

The CHAIRMAN. Let the envelope be received for the record.

(The photostatic copy of the envelope follows:)



Mr. LISHMAN. The register number is 416200. What did you mean when you said you would not "take the fall" in that letter?

Mr. SNODGRASS. I had been instructed to miss this question. I decided to answer it correctly. If I had missed I would have lost and have been off the program.

Mr. LISHMAN. Why did you do that at this particular stage of the affairs. You had been receiving questions and answers prior to this and going along. Why at this time did you decide to balk at this particular question?

Mr. SNODGRASS. I think maybe way down deep inside there was a hope that things would work out fair and square. Also, I knew the answer. I had been told the answer.

Mr. LISHMAN. I appreciate your feeling, Mr. Snodgrass, because I admire Emily Dickinson, to. It was your refusal on esthetic grounds that you really did not want to go ahead?

Mr. SNODGRASS. I suppose so.

Mr. LISHMAN. Did you tell the producers at any time prior to the show that you were going to refuse to "take a dive" on that particular question?

Mr. SNODGRASS. No; I did not.

Mr. LISHMAN. So they started the performance secure in the belief that on this occasion you would, as on previous occasions, lose at the point you were supposed to lose?

Mr. SNODGRASS. That's right.

Mr. LISHMAN. And you did not do that?

Mr. SNODGRASS. I did not do that; no, sir.

Mr. LISHMAN. We are about to see a showing of this particular show. Before we have it I would like to ask you, after you had given the correct answer to the consternation of the master of ceremonies and all concerned, what happened?

Mr. SNODGRASS. During the break for the middle commercial between the two games, suddenly, as had never happened before while I was on the show, Mr. Enright and Mr. Freedman came down to the isolation booths to ask me if I was all right, to ask me if I wanted to go on, to which I said "Yes," and they also spoke to Hank Bloomgarden. I could not hear what they said to him. After the commercial when we were back on the air I think you will see that Jack Barry offers us the chance to stop there for the evening. But I said "No." I would go on.

Mr. LISHMAN. Mr. Snodgrass, from that point on——

Mr. SNODGRASS. I was on my own; yes, sir.

Mr. LISHMAN. You were on your own.

Mr. Snodgrass, did there come a time in that program when you gave a correct answer which was ruled wrong?

Mr. SNODGRASS. It was either a correct answer which was ruled wrong, or Mr. Bloomgarden gave a wrong answer which was ruled right.

Mr. LISHMAN. So that the producers were obliged because of the public outcry to have you return to another match with Mr. Bloomgarden?

Mr. SNODGRASS. That is right. This was a question where I was to name the five classifications of vertebrae in the spinal column. I started with the ones I knew and I said first of all the sacrum, and was called wrong, that the answer card had the word "sacral." As Mr. Bloomgarden named the five classes of vertebrae and he said "coccyx" and the outcry was that if I was wrong for "sacral" he should have been called wrong for "coccyx," the adjective form was "coccygeal." If he was right I was right and if I was wrong he was wrong.

Mr. LISHMAN. Did you answer the first question where you were absolutely on your own correctly?

Mr. SNODGRASS. Yes; I did.

Mr. LISHMAN. And subsequently, because of the outcry is it a fact that you came back to appear on another program?

Mr. SNODGRASS. Yes; I did.

Mr. LISHMAN. Against Mr. Bloomgarden?

Mr. SNODGRASS. Against Mr. Bloomgarden.

Mr. LISHMAN. Were you assisted in this second program?

Mr. SNODGRASS. Yes; I was.

Mr. LISHMAN. Do you know the reason why you were given assistance and was this your final appearance?

Mr. SNODGRASS. This was my final appearance. I was given assistance so I would not do again what I had done the week before. When I had been called wrong on the vertebrae I went off the air that night losing by a score of 21 points, which at this time was multiplied by \$3,500 a point, which is—

Mr. LISHMAN. \$73,000.

Mr. SNODGRASS. \$73,000.

Mr. LISHMAN. That created a great deal of confusion, did it not, when the producers saw themselves losing \$73,000 unexpectedly?

Mr. SNODGRASS. Yes; it did. Mr. Freedman came to the dressing room after the show saying that I had ruined him. The budget had been knocked back and that Barry & Enright were allotted so much. On this one show we had gone so far over the budget they just didn't know what they were going to do.

Mr. LISHMAN. Did they say that you had ruined his career?

Mr. SNODGRASS. Yes; he said that.

Mr. LISHMAN. Did they say anything about ruining your career?

Mr. SNODGRASS. No; they did not.

Mr. LISHMAN. On the last and final appearance that you made against the will of the producers, what assistance were you given?

Mr. SNODGRASS. I was given assistance. We were going to play the last game over again. We started off again at \$3,500 a point. I was given assistance on that, as it was explained to me, they could not have me lose that one altogether. So we were tied on that one. We would play then for \$4,000 a point which would be of two rounds. The first question I was not given any answers on. So by this time they knew if they gave me the questions and answers I would answer. So if I were going to miss I was to miss the first question. They gave me the questions and answers for the second round. So least I would have 11 points, and they would only lose by 10 points.

Mr. LISHMAN. So they were doing two things: They were recouping some of their \$73,000 unexpected loss by this final appearance.

Mr. SNODGRASS. Yes, sir.

Mr. LISHMAN. And they were easing you out in such a manner that the public would never know why you were eased out?

Mr. SNODGRASS. That is right; yes.

Mr. LISHMAN. I would like now to ask for a showing of this May 20, 1957, show on which the incidents that the witness has testified to occurred. Also that a transcript of the sound track be incorporated into the record.

(The kinescopic reproduction was shown.)

(The transcript of the sound track follows:)

BARRY. Good evening. I'm Jack Berry. To date, Hank Bloomgarden has won over \$50,000. Because of a series of ties, he must play the next game at \$3,000 a point, which means that in just a few brief minutes he could increase his money winnings to over \$100,000 or, he could lose all of his winnings. To learn the outcome, let's meet our first two players as Geritol, the high-potency tonic that helps you feel stronger fast, presents "Twenty-one."

ANNOUNCER. Back for the fourth week—Mr. James Snodgrass. And returning with \$52,000, Mr. Hank Bloomgarden.

BARRY. Gentlemen, welcome back to "Twenty-one." This is getting to be like old home week—your familiar faces here on the television screen standing be-

side me each week. Have you been getting lots of advice during this past week, Hank?

BLOOMGARDEN. Oh, I certainly have, Jack. Not only from family and friends, but from hundreds of people all over the country who have taken the trouble to write me and I certainly appreciate their interest. I certainly appreciate their advice too. But you know, it's a peculiar thing, this is just an individual game, and I guess I have to make up my own mind as to what to do, notwithstanding all of this wonderful and thoughtful advice that I've gotten.

BARRY. I'm sure people in writing telling you how you should play the game are doing it really with your best interest, but as you say, you have to play it the way you see fit.

BLOOMGARDEN. Right.

BARRY. How about you, did you get any advice, Jim?

SNODGRASS. Well, yes, I have been getting lots of advice, but I'm afraid it's— it's just adding up to confusion with me.

BARRY. Well—let's hope that confusion will not overrule the wonderful thinking you have been doing so far.

Gentlemen, you are as familiar as anybody with what has happened here. You tied a number of times. We're going to play at \$3,000 a point, which means that \$63,000 in overall is at stake. Hank, you could either be wiped out completely or you could end up with over \$100,000. Jim, you could wind up with \$63,000, or anywhere in between that. Hank, you know in the excitement of the game last week, I got kind of carried away myself, and mentioned a number of times to you how much you could lose. I didn't mean it to in any way unnerve you, and I'll try very hard not to do that again tonight.

And now, if you fellows are ready to play, suppose you take your places in the studios, put on your earphones and the best of luck to both of you.

Neither player inside can hear anything until I turn their studios on, they cannot see anybody in the studio audience, nor can they hear the studio applause. I'm going to turn both studios on right now. Can you hear me, Jim?

SNODGRASS. Fine, thank you, Jack.

BARRY. How about you, Hank?

BLOOMGARDEN. Very well, thank you.

BARRY. All right, fellows, the most monumental game in the history of our program is about to take place. I think you deserve a few seconds to relax in there and get ready for the big—the giant game about to come—so, take it easy if you will. And we'll get on with the game in just a moment, but first I wonder, if we could turn the cameras around, would we see something like this?

FEMALE VOICE. Ed, you know how tired you have been feeling lately—here's Jack Barry. He's probably going to talk about Geritol. You know, he's talking about people like you, so listen.

MALE VOICE. OK, Jane.

BARRY. Thank you, ma'am. Fact is, I am talking to your husband and to everyone who feels tired and rundown. Remember, your weak, rundown condition may be due to what doctors call iron deficiency anemia. We call it much more simply "tired blood." Check with your doctor, and to feel stronger fast—take Geritol, the high-potency tonic that begins to strengthen tired blood in just 24 hours. Take the liquid or take the tablet and take them every day. And if tired blood is your problem, you'll feel stronger fast—within 7 days or your money back. And mothers, remember after sickness help your child gain strength fast, give him Geritol, Jr., the ideal tonic for growing children.

Now, on with the game. Hank, remember, \$3,000 a point, your \$52,000 is at stake and I'll get back to you in a moment.

All right, Jim, it's unnecessary to point out the rules of the game, you've played it enough, you have to try to get to 21 as fast as you can. The first category is American—American literature. You grade yourself—how many points do you want from 1 to 11?

SNODGRASS. I'll take 11, please.

BARRY. That would be our most difficult question on American Literature. 11 points.

I will read you lines from four of America's greatest poets—in each—in each case tell us the name of the poet—first, "I hear America singing—the very carols I hear"; second, "The fog comes on little cat feet"; third, "Hope is the thing with feathers that perches in the soul"; fourth, "I shot an arrow into the air—it fell to earth, I know not where." What I want is the names of the poets. Shall we take them one at a time?

SNODGRASS. Ah, yes, please.

BARRY. All right, for 11 points. First, "I hear America singing—the very carols I hear."

SNODGRASS. Ah, that is—Walt Whitman.

BARRY. That is right. Second, "The fog comes on little cat feet."

SNODGRASS. That is ah—the poem—"The Fog" or "Fog" by Carl Sandburg.

BARRY. That's right. Three, "Hope is the thing with feathers, that perches in the soul."

SNODGRASS. "Hope is the thing with feathers—that perches in the soul." That is—ah—actually one of my favorite poets—Emily Dickinson.

BARRY. You're right. Fourth and finally, which would give you a full 11 points—and have you off to a flying start, "I shot an arrow into the air—it fell to earth, I know not where."

SNODGRASS. Henry Wadsworth Longfellow.

BARRY. You're right. For a full 11 points. All right, Jim, you couldn't get off to a better start and I'll get back to you in just a moment.

Hank Bloomgarden, here we go—for \$3,000 a point. The category, American literature. How many points do you want from 1 to 11?

BLOOMGARDEN. Ten.

BARRY. Ten points—one of our more difficult questions. Tell us the name and the author of the books in which the following are major characters. First, Victor Joppolo, J-o-p-p-o-l-o, whose attempts to rebuild a war-torn town are brought to an abrupt end by order of a superior; second, Dick Diver, writer and psychologist, whose marriage to a patient was followed by the dissipation of his genius and the ruin of his promising career; third, when a school building collapsed and killed seven—several children as he had predicted, Willie Stark was catapulted into a powerful political career which ended with his murder; I want the name and author of the books in which the following are major characters. Shall we take it one at a time?

BLOOMGARDEN. Please.

BARRY. Victor Joppolo, whose attempts to rebuild a war-torn town are brought to an abrupt end by order of a superior.

BLOOMGARDEN. Victor Joppolo appeared in John Hersey's book "A Bell for Adano."

BARRY. Correct. Dick Diver, writer and psychologist, whose marriage to a patient was followed by the dissipation of his genius and the ruin of his promising career.

BLOOMGARDEN. Dick Diver—that was in "Tender is the Night" by F. Scott Fitzgerald.

BARRY. Also correct. Finally, for 10 points, when a school building collapsed and killed several children as he had predicted, Willie Stark was catapulted into a powerful political career which ended with his murder. For 10 points.

BLOOMGARDEN. Willie Stark—that was in "All The King's Men."

BARRY. Right.

BLOOMGARDEN. "All The King's Men" was written by—Robert Penn Warren.

BARRY. You're right—and you've got ten points. I'll get back to you in just a moment, Hank.

Jim Snodgrass, you have 11 points—the category—Armed Forces. Armed Forces. How many points do you want?

SNODGRASS. I have 11?

BARRY. Yes.

SNODGRASS. I'll take 10 please—get to 21 if I can.

BARRY. You're going to take 10 points, which would give you 21 if answered correctly. Because you are trying for 21, you may have some extra time if you need it. If you do answer correctly, please remember that Hank's—Hank Bloomgarden still has one more turn to go—so hold on, even if you get 21. Here it is—for 10 points. Give me the present locations of the training academies of—first, the U.S. Army; second, the U.S. Navy; third, the U.S. Merchant Marine; fourth, the U.S. Air Force; and fifth, the U.S. Coast Guard. Want some time to think this over?

SNODGRASS. Ah, yes—please.

BARRY. All right—I'll tell you when your time is up.

SNODGRASS. All right. Thank you.

BARRY. Your time is up, Jim—let me repeat the question. This is an important moment for you, ten points would give you 21. I want the locations—the present locations of the training academies of the U.S. Army, U.S. Navy, U.S. Merchant Marine, U.S. Air Force, and U.S. Coast Guard.

SNODGRASS. All right—uh—let me see if I can get the Army, Navy and ah—Coast Guard first.

BARRY. All right—how about U.S. Army?

SNODGRASS. That is—ah—the U.S. Military Academy at West Point, N.Y.

BARRY. Correct. You asked next for the U.S. Navy.

SNODGRASS. Yes, sir. Ah, that is—the U.S. Naval Academy at Annapolis, Md.

BARRY. That is correct. Did you ask now for the—

SNODGRASS. Coast Guard, please.

BARRY. Coast Guard. All right. Let's skip down to the Coast Guard.

SNODGRASS. That—ah—the Coast Guard is in—ah—New London, Conn.

BARRY. Correct. You have three of them. You need two more for 21 points. U.S. Merchant Marine.

SNODGRASS. Let's see—it used to be at Sheepshead Bay—it's ah—Kings Point on Long Island, here in New York.

BARRY. Correct. Finally, if you can give me the location of the Air Force, you will have 21 points.

SNODGRASS. Um—this is where the word "present" comes in—

BARRY. Yes.

SNODGRASS. Ah—let's see, they're building the new Air Force Academy at Colorado Springs in—ah—Colorado. That's not done yet. I think—ah—wait—yes, yes—at the Lowery Air Force Base in Denver, Colo.

BARRY. That is right, and you've scored 21 points. Jim Snodgrass, you've done it again—you've got 21 points—you still have to wait to see what Hank Bloomgarden does—I'm gonna give you some—I'm gonna let you listen, but please do not divulge your score or speak in any way.

Hank, you have 10 points—the category is Armed Forces. Armed Forces. How many points do you want, from 1 to 11?

BLOOMGARDEN. Eleven, please.

BARRY. You're going all the way for 21? I can tell you now that your opponent has already scored 21 points. It means once again and I'm not gonna point this out, that everything is at stake—if you answer correctly we'll have another tie and we'll have to play again at \$3,500 a point. If you miss, of course, you'll be wiped out. Here is your question—because you're trying for 21, I'll give you some extra time to think it over. The highest rank currently held in the U.S. Army is General of the Army. The highest rank in the Navy is Fleet Admiral. There are at present three Generals of the Army and two Fleet Admirals on active duty. Name these five men. Understand the question all right? Want some extra time to think it over?

BLOOMGARDEN. Please.

BARRY. I'll tell you when your time is up.

BLOOMGARDEN. Could you, could you run through that again, please—the question?

BARRY. Yes. I think the only important part you have to know is the actual last part. There are at present three Generals of the Army and two Fleet Admirals on active duty. Name these five men. Want to think it over?

BLOOMGARDEN. Please.

BARRY. All right—I'll tell you when your time is up.

Your time is up, Hank. For 11 points which would give you 21—and another tie, or, if you miss you will be wiped out—the question again. The highest rank currently held in the U.S. Army is General of the Army. The highest rank in the Navy is Fleet Admiral. There are at present three generals of the Army and two fleet admirals on active duty. Name these five men.

BLOOMGARDEN. Well, the Army. President Eisenhower was a General of the Army, but he had to resign from the Army when he assumed the Presidency, so that let's him out. General George Marshall is one.

BARRY. That's right.

BLOOMGARDEN. General Douglas MacArthur is another.

BARRY. You've got two.

BLOOMGARDEN. Oh—Omar Bradley. Omar Bradley.

BARRY. That is right. You've got three of the generals—now, two fleet admirals—if you answer this successfully you will have 21 points.

BLOOMGARDEN. Nimitz is one.

BARRY. That is correct. One more will give us another tie.

BLOOMGARDEN. Leahy. Leahy.

BARRY. That's right—and you scored 21 points.

Gentlemen, I don't have to tell you both what's happened—there's the 21 up again—both of you've done it again—21 points, and I'm sorry, we're gonna

have to put you through some more of what is ob—ob—obviously torture for both of you in there. We'll have to play another game, this time at \$3,500 a point. I'm not even gonna stop to figure out how much it could be—it probably is o—over \$70,000 will be involved. Will both of you relax for a moment or so? If you can, and we'll get back to you in just a moment.

We'll—uh—we'll get on with the next game in just a moment but first there is a word about another one of our fine products.

[Sound of sheep bleating.]

ANNOUNCER. If even counting sheep can't help you to sleep, your nerves on edge, try the wonderful new aid to sleep that relaxes you and helps you fall asleep gently. It's called Sominex. The next time you can't sleep, take Sominex as directed for 100 percent safe sleep. Sominex contains no narcotics, no barbiturates, no bromides, and it's nonhabit forming. What's more, Sominex's combination of special ingredients helps calm down jittery nerves, helps you feel more relaxed. So if you ever can't sleep take Sominex as directed for natural-like sleep with 100 percent safety. In the morning, you wake up refreshed, without morning-after grogginess. Get Sominex at your drug store. No prescription needed. It's new, it's effective, it's Sominex. Take as directed for 100 percent safe sleep.

BARRY. I'd say that was pretty good advice, wouldn't you? Incidentally, all questions used on "Twenty-one" have been authenticated for accuracy and order of difficulty by the editorial board of the Encyclopedia Britannica.

I want to turn both these studios on right now. Hank, the boys in the control room—the producers have asked me to ask both of you if you both feel at this tremendous amount—I want to point out that in the next game \$73,500 will be at stake. As far as I know, that is the greatest amount of money ever at stake in any quiz program on television anywhere in the world. Do you feel you can continue on with this, Hank? All right—tonight—but you look a little bit shaken—you're all right—Jim, are you OK?

SNODGRASS. Yes, I'm fine.

BARRY. Both of you ready to go on?

SNODGRASS. Yes.

BARRY. All right, boys, it's up to you. Here we go—its set for \$3,500 a point—and I'll get back to you in a moment, Hank.

OK, Jim—the category—Queens—Queens. How many points do you want, from one to eleven?

SNODGRASS. I'll take ten, please.

BARRY. Ten points. One of the more difficult questions, again. This Queen of Hungary and her husband Francis the First had many children, one of whom became a famous queen of France. Tell us first the name of this Queen of Hungary, second the name of her daughter who became Queen of France, and third, the name and number of the King of France who married her daughter. Let's take the first one—the name of the Queen of Hungary.

SNODGRASS. I think her name was Maria Theresa.

BARRY. That's right. Second, the name of her daughter who became Queen of France.

SNODGRASS. The ah—name of the daughter that became Queen of France was—ah—Marie Antoinette.

BARRY. That is correct. Finally, the name and number of the King of France who married her daughter.

SNODGRASS. Well, let's see—that was Louis—the—the—I was going to say the last of the Louis—uh—Louis the Sixteenth.

BARRY. That is correct—you've scored ten points. I—ah—I have a feeling the audience is more stunned than you are in there, Jim. That was the end of the question and he scored his ten points. We'll get back to you in just a moment.

Hank Bloomgarden, at \$3,500 a point, the category is Queens—how many points do you want, from one to eleven?

BLOOMGARDEN. I'll take 10 on that.

BARRY. For ten points. This Queen of Hungary and her husband Francis the First had many children, one of whom became a famous queen of France. Tell us first the name of this Queen of Hungary, second the name of her daughter who became Queen of France, and third the name and number of the King of France who married her daughter. First, the name of the Queen of Hungary.

BLOOMGARDEN. The name of the Queen of Hungary—was—Maria Theresa.

BARRY. Correct. Second, the name of her daughter who became Queen of France.

BLOOMGARDEN. That was Marie Antoinette.

BARRY. That is correct. Third, the name and number of the King of France who married her daughter, for a full ten points.

BLOOMGARDEN. Oh, it was Louis—which one—Louis the Sixteenth.

BARRY. Correct. You've got ten points. I'll get back to you in just a moment. Jim, you have ten points—the category is Biology—Biology. How many points do you want, from one to eleven?

SNODGRASS. I'll try for 11.

BARRY. You'll try for 11?

SNODGRASS. I'll try for 11.

BARRY. Which would give you 21 if answered correctly, but remember Hank still has a turn to go so—take it easy—if you answer correctly.

The bones in our backbones or vertebrae are arranged in five groups and named for their positions in the spinal column. Name these five groups. Understand it all right?

SNODGRASS. Aah—yes.

BARRY. Want some time to think it over?

SNODGRASS. Yes, please.

BARRY. I'll tell you when your time is up. Good luck, Jim.

SNODGRASS. Thank you.

BARRY. For 11 points which would give you 21, the bones in our backbone or vertebrae are arranged in five groups and named for their positions in the spinal column. For 11 points and 21, name these five groups.

SNODGRASS. Aah—I imagine the sacrum is part of it—

BARRY. I beg your pardon?

SNODGRASS. The sacrum—or sacrum. S-A-C-R-U-M.

BARRY. I'm sorry to have to call for a ruling on this, Jim—

SNODGRASS. Or sacroiliac, it may be also.

BARRY. I'll have to call for a ruling on that, too. One of the groups is called S-A-C-R-A-L—the producers say 'no'—cannot accept. I'm sorry, Jim. Sacral is actually the name—

SNODGRASS. Sacral—

BARRY. And we'll have to get it precisely from both—I'm sorry you lose your 11 points—it puts you back down to zero—better luck on the next round.

SNODGRASS. Well, let's see what happens.

BARRY. All is not lost yet—Hank still has to answer.

Hank Bloomgarden, you have ten points. The category is Biology—how many points do you want, from one to eleven?

BLOOMGARDEN. Eleven.

BARRY. You're gonna try for 21.

BLOOMGARDEN. Right.

BARRY. Here is your question for 11 points—the bones in our backbone—

BLOOMGARDEN. Doesn't he have 21?

BARRY. I beg your pardon?

BLOOMGARDEN. Doesn't he have 21?

BARRY. As you know, if he had 21, I would have told you so, Hank.

BLOOMGARDEN. Oh.

BARRY. Here we go. The bones—we'll have to go along here—the bones in our backbones or vertebrae are arranged in five groups and named for their positions in the spinal column. Name these five groups. Want time to think it over?

BLOOMGARDEN. Please.

BARRY. I'll tell you when your time is up and good luck.

For 11 points, which would give you 21, Hank, name the five groups in the spinal column.

BLOOMGARDEN. The lumbar—

BARRY. Lumbar is one.

BLOOMGARDEN. The sacral—

BARRY. Two.

BLOOMGARDEN. The—the Thoracic—

BARRY. That is correct. You've got three of them. Two more to give you a victory.

BLOOMGARDEN. The cervical—

BARRY. Right. You need one more for 21 points.

BLOOMGARDEN. I'm not sure of the pronunciation of this—I'll spell it for you—you'd better pronounce it. AAh, C-O-C-C-Y-X—I think it's coccyx or coccyx—I'm not sure. C-O-C-C-Y-X.

BARRY. I, I have no idea how to pronounce it, but you're right—you have 21 points.

Congratulations, Hank—Ladies and gentlemen, would you all hold your applause, please—one moment—Jim, I think you've heard what happened. Our time is running out—you've just won another victory—you've won by a score of 21 points—at \$3,500 a point—you've won \$73,500—added to your previous \$52,500, your winnings—\$126,000. Congratulations, Hank Bloomgarden.

What do you—what do you say after that? I believe that that's the greatest amount of money ever won in one fell swoop on television—congratulations—Jim, how do I thank you—the magnificent showing—we were playing for \$3,500 a point. I know you're going to have an art exhibit down at the Village at the end of the month and this \$3,500 that you're gonna get as a consolation will go toward making your career as an artist even a more secure one. Congratulations—a tremendous hand for Jim Snodgrass.

Congratulations! Congratulations again! Whoo—we'll be back in 30 seconds to continue, but right now here's my friend Bob Sheppard who seems to have his eye on the calendar—Bob—

SHEPPARD. Well, thank you very much, Jack. Now, friends, have you ever wondered whether Geritol could really help you feel stronger—you know, with more energy throughout the day—all right, then. Well, why not make this week your week to try Geritol and then you judge for yourself—now remember—if you've been feeling tired and run down your trouble may be due to iron deficiency anemia—or as we call it Tired Blood. Take Geritol liquid or tablets every day—now this high potency product actually begins to strengthen tired blood in just 24 hours—you'll feel stronger fast—within seven days or your money back. And, once again, here is Jack Barry.

BARRY. I said that right, didn't I—\$126,000—that's the amount. We won't be on next week—Producer's Showcase is going to have the Festival of Magic with Ernie Kovacs as the host and with a whole bunch of wonderful magicians—but I think it'll be very worthwhile if you're back with us in two weeks to see what Hank Bloomgarden does with \$126,000. I don't know about you, but we had a wonderful time here. Good night. Thank you, everybody. Good night.

ANNOUNCER. Transportation for "Twenty-one"'s guests was arranged by American Airlines. American—choice of experienced travelers everywhere. And famous for the Mercury. Luxury leader in the world of flight.

"Twenty-one" is a Jack Barry and Dan Enright Production. This is Bill McCord speaking.

ANNOUNCER. What's the best way to reduce? Eat plenty or starve yourself? Starve yourself? Wrong! A half-empty stomach causes hunger tantrums. Now, with the RDX full-stomach reducing plan, you fill your stomach, avoid hunger tantrums, lose excess weight naturally and fast—and safe, pleasant tasting RDX tablets contain no dangerous drugs, no hormones, so if your doctor has told you to lose weight, get RDX at your drugstore, now.

Geritol, America's No. 1 tonic—Geritol, the fast acting, high potency tonic helps you feel stronger fast, has presented "Twenty-one."

And now, this is Bob Sheppard, wishing you good health from Pharmaceuticals, Inc., who brings you Geritol, Sominex, RDX and other fine quality drug products.

Mr. MACK. Mr. Lishman, you have more questions you wish to ask?

Mr. LISHMAN. Yes, thank you.

What was the wrong answer that you were supposed to have given to the Emily Dickson quotation?

Mr. SNODGRASS. Ralph Waldo Emerson.

Mr. LISHMAN. What happened after this showing we have just seen? Before I ask that question, I would like to ask another. The reproduction you have just seen, is it an accurate presentation of the actual questions and answers that were asked you on that show?

Mr. SNODGRASS. It is.

Mr. LISHMAN. What happened after you had balked and given the correct answer on a question which you were supposed to lose?

Mr. SNODGRASS. I went to my dressing room and I was immediately joined by Mr. Freeman who, as I said before, came in almost in tears

or in tears saying that I had ruined him because I had just thrown the budget all out of whack and everything else.

After each program we adjourned to the NBC press room for publicity promotion and so forth. Before we even got there already the wave of protests from people, mostly doctors, I think, about the answer having either been right or wrong. By the time we got down to the press room it was quite evident that there had been something wrong and that there was a reaction to this. I was taken aside by Mr. Enright.

Mr. LISHMAN. You are referring to the medical question?

Mr. SNODGRASS. The medical question; yes, sir. I was taken aside by Mr. Enright and saying that all was not lost perhaps, because there was such a reaction to this question it might be that we would have to do it over again.

Mr. LISHMAN. You would have to come back on another performance?

Mr. SNODGRASS. That is right; yes.

Mr. LISHMAN. Did you come back on another performance?

Mr. SNODGRASS. June 3, 1957.

Mr. LISHMAN. Before that performance were you given assistance in advance of your appearance?

Mr. SNODGRASS. I was in my dressing room the night of the performance.

Mr. LISHMAN. Who gave you that assistance?

Mr. SNODGRASS. Mr. Freedman.

Mr. LISHMAN. What form did that assistance take?

Mr. SNODGRASS. I was told what the questions and answers were to be for the first game of two rounds, and for the last round of the second game.

Mr. LISHMAN. What happened in this last performance?

Mr. SNODGRASS. It went completely as scheduled. Knowing the answers to the questions of the two rounds of the first game I was able to answer them. The second game, which had to do with the political leaders, I was unable to answer one part of the question which had to do with the name of the Prime Minister of Ghana. So I missed that. I answered the second question, which was worth 11 points. I lost to Mr. Bloomgarden at that time by a score of 10 points.

Mr. LISHMAN. When you were on your own, and apparently you were on your own.

Mr. SNODGRASS. I was on my own in the first questions.

Mr. LISHMAN. Did you really hope you could beat Mr. Bloomgarden.

Mr. SNODGRASS. Yes, I did.

Mr. LISHMAN. Were you ever told how much you would be permitted to win?

Mr. SNODGRASS. At one time when the series of advertising was mentioned, I was told I would come off with at least \$2,000 or \$3,000.

Mr. LISHMAN. You would what?

Mr. SNODGRASS. I would get a consolation prize of at least \$2,000 or \$3,000.

Mr. LISHMAN. Were you ever told of a larger amount you might win?

Mr. SNODGRASS. No.

Mr. LISHMAN. How much did you actually win?

Mr. SNODGRASS. \$4,000.

Mr. LISHMAN. That was the total amount you received?

Mr. SNODGRASS. That is the total amount; yes, sir.

Mr. LISHMAN. If you had not gone contrary to instructions, what do you think the chances might have been?

Mr. SNODGRASS. They would not have been any better. Following the instructions I would have come off with \$3,000.

Mr. LISHMAN. After the stories began to appear in the newspapers about the show being fixed, did you have a luncheon conference with Mr. Freedman?

Mr. SNODGRASS. Yes. Mr. Freedman tried to get in touch with me. I had moved from my address on 16th Street to my present address. He called my old address. He came to see me at my present address. I was not there. I had a subtenant at the time who was there and took a message that I was to call Mr. Freedman, so I called Mr. Freedman. He asked me to have lunch with him. I said fine. He said it would be better for you not to come up here. I will come down there. So he came down to my address on Eighth Avenue.

We went across the street to a luncheonette and had lunch. He told me—I had already seen the newspapers about the quiz show business—and he reminded me that anything that had passed between us as far as questions and answers were concerned was confidential and asked me not to tell anyone. I told him that I had not planned to tell anyone, but that if I was subpoenaed to the grand jury I could not do anything more than to tell the truth; that I would not commit perjury.

Mr. LISHMAN. You did tell the truth before the grand jury?

Mr. SNODGRASS. Yes, I did.

Mr. LISHMAN. What did you say to Mr. Freedman when he spoke this way to you?

Mr. SNODGRASS. As I said, I told him if I was subpoenaed before the grand jury I would have to tell the truth.

Mr. LISHMAN. What did Mr. Freedman say to that answer?

Mr. SNODGRASS. He said at this time he didn't think I would be subpoenaed before the grand jury. Then he called me—No, he came to my studio again and said that he had talked with his lawyers and told me that I would not be committing perjury. The way it would work is this: I would be questioned by the district attorney's office and as long as I was not under oath I would not be committing perjury.

Mr. LISHMAN. Did you get the inference that you should not tell the truth to the district attorney, or was he implying that to you?

Mr. SNODGRASS. Yes; I would say so.

Mr. LISHMAN. Did he tell you at that conversation if you said you had been given questions and answers you would have to back it up?

Mr. SNODGRASS. No; that came a little later. After this conversation where he came to my studio I received the subpoena at which time I sought out legal counsel, not knowing what to do. I figured the best thing to do was to get a lawyer. The night before, or 2 nights before I was to appear before the grand jury, Mr. Freedman called me and asked me if I had been subpoenaed. I said "Yes." At this point he told me that if I did tell the truth I would have to back it up. Before I had a chance to say anything, he said "By the way, we should not

discuss this over the telephone," he would come to see me the next day.

Mr. LISHMAN. Did he see you the next day?

Mr. SNODGRASS. No; he did not come.

Mr. LISHMAN. Mr. Snodgrass, when you were given this assistance in advance of the show by Mr. Freedman was anyone else present?

Mr. SNODGRASS. Never.

Mr. LISHMAN. Do you have any personal knowledge that any other contestant was fixed?

Mr. SNODGRASS. None whatsoever.

Mr. LISHMAN. Do you have any other kind of knowledge?

Mr. SNODGRASS. No.

Mr. LISHMAN. Did stories about you while you were appearing before the grand jury appear in the newspapers?

Mr. SNODGRASS. Yes; they did.

Mr. LISHMAN. Did anyone from National Broadcasting Co. ever contact you and make inquiries?

Mr. SNODGRASS. Not to my knowledge; no, sir.

Mr. LISHMAN. What is your feeling about the morality of this entire situation? You have been here as a witness today. You have testified. I would just like to get your reaction to the morality of this situation.

Mr. SNODGRASS. I have very mixed feelings on the subject.

Mr. LISHMAN. What are your mixed feelings?

Mr. SNODGRASS. In some ways I consider what was presented on television was not entertainment. On the other hand, I realize that there was something else wrong with it and it was fraudulent and as such it was wrong.

Mr. LISHMAN. Do you think that the American people believed that they were witnessing honest contests of knowledge when they viewed these programs?

Mr. SNODGRASS. Yes, I would say the majority of them did, or the great majority did.

Mr. LISHMAN. Did you receive fan mail attesting to that?

Mr. SNODGRASS. Yes, I did.

Mr. LISHMAN. In volume?

Mr. SNODGRASS. I received a quantity of fan mail; yes, sir.

Mr. LISHMAN. Has anyone ever approached you and asked you not to give freely of the knowledge that you have of all this situation other than what you have testified to?

Mr. SNODGRASS. No one, sir.

Mr. LISHMAN. Mr. Freedman is the only person?

Mr. SNODGRASS. Mr. Freedman is the only person.

Mr. LISHMAN. I have no further questions.

Mr. MACK. Mr. Snodgrass, you observed this show before you were called as a participant in the show?

Mr. SNODGRASS. No, I had not seen the show.

Mr. MACK. I understood that you testified that you were invited to the studio on one occasion.

Mr. SNODGRASS. Yes; I am sorry, as a standby.

Mr. MACK. As a standby participant?

Mr. SNODGRASS. Yes.

Mr. MACK. You had an opportunity to observe the show?

Mr. SNODGRASS. Yes, that was the first time I saw the show, sort of hazily in a monitor which was on the other side of the stage.

Mr. MACK. On that occasion you thought that the show was on the level?

Mr. SNODGRASS. Yes; I did.

Mr. MACK. Did they also coach you on how to conduct yourself on the program.

Mr. SNODGRASS. Yes; they did.

Mr. MACK. Did they give you instructions such as breathing into the mike?

Mr. SNODGRASS. My instructions—I was never told to breathe into the microphone as such—I was told how many “beats,” was the word, to pause before saying how many points I would take or before answering the question.

Mr. MACK. At the proper point we would like to have included in the record the transcript of the sound of this program.

Mr. ROGERS, do you have some questions?

Mr. ROGERS. Yes; I have one or two, Mr. Chairman.

What were the facts surrounding the delivery of the \$4,000 to you in the final analysis?

Mr. SNODGRASS. The rules of the game were such that the losing—if a challenger had never won he would receive the amount of one point that was being played for. The final game I played we were playing at \$4,000 a point, and that is what I received.

Mr. ROGERS. They did not make any statement to you one way or the other above giving you a bonus?

Mr. SNODGRASS. No, sir.

Mr. ROGERS. They didn't indicate they were giving you this to keep your mouth shut?

Mr. SNODGRASS. No. This was well known, this is what the losing challenger received was the one point value.

Mr. ROGERS. All of your instructions you received, you received prior to the time you entered the isolation booth?

Mr. SNODGRASS. Yes, sir.

Mr. ROGERS. There were no signals given to you after you were in the booth as to how many points to play for or as to when and how to answer a question?

Mr. SNODGRASS. None whatsoever.

Mr. ROGERS. As far as you know, there was none of this information given to the champion or the other contestant during the program?

Mr. SNODGRASS. I have no knowledge of this.

Mr. ROGERS. Was there any indication that Mr. Barry knew what was going on?

Mr. SNODGRASS. No.

Mr. ROGERS. Did he appear to you to get upset when you answered the question you were supposed to miss?

Mr. SNODGRASS. I frankly was too upset myself to notice.

Mr. ROGERS. So far as you know, Mr. Freedman was the only one that knew anything about the transaction and the way it was handled; the only one that gave you any information at all?

Mr. SNODGRASS. That is correct, sir.

Mr. ROGERS. I believe you testified that he told you that if you went to the district attorney's office and talked to the district attorney that

you would not be subject to penalties of perjury because you were not under oath?

Mr. SNODGRASS. That is right.

Mr. ROGERS. Did he say anything to you then about not telling what had happened?

Mr. SNODGRASS. Yes. He asked me not to tell what had happened; yes, sir.

Mr. ROGERS. To tell the district attorney that these things did not happen or just do not say anything?

Mr. SNODGRASS. Not to say anything.

Mr. ROGERS. In other words, he wanted you to perjure yourself actually without being subject to penalties of perjury because you did not happen to be under oath. That is what he wanted you to do. As Mr. Lishman asked you, Mr. Snodgrass, your reaction in this whole situation that you revealed here, in your opinion it is a crude fraudulent thing basically, is it not?

Mr. SNODGRASS. Yes, this may be one of the reasons why I wrote the letters. I couldn't tell you.

Mr. ROGERS. It was not in accordance with the rules of conduct that you were raised by, was it?

Mr. SNODGRASS. Not exactly.

Mr. ROGERS. That is all, Mr. Chairman.

Mr. MACK. Mr. Springer.

Mr. SPRINGER. Mr. Snodgrass, to make it clear, these letters which have been introduced into the record were written by you. Next, they were put in an envelope and sealed by you.

Mr. SNODGRASS. Yes, sir.

Mr. SPRINGER. Third, they were put in the U.S. mail, registered and prepaid.

Mr. SNODGRASS. Yes.

Mr. SPRINGER. And they were received by you.

Mr. SNODGRASS. Yes, sir.

Mr. SPRINGER. And today they are in the same form as they were on the day that you wrote them and sealed them and received them: is that correct?

Mr. SNODGRASS. That is correct.

Mr. SPRINGER. You are an artist?

Mr. SNODGRASS. Yes, sir.

Mr. SPRINGER. For how long?

Mr. SNODGRASS. Since 1955.

Mr. SPRINGER. Since that time what has been your average annual income?

Mr. SNODGRASS. It has varied a great deal. The year that I was on "Twenty-one" and with what I made from "Twenty-one" and what I got from pictures, that year was my best year. I made about \$6,000 that year. I would say my average yearly income has been perhaps \$2,000.

Mr. SPRINGER. Did you ever have any conversations with Mr. Enright?

Mr. SNODGRASS. Only the one conversation which was very general with Mr. Enright.

Mr. SPRINGER. In these conversations that you had with Mr. Freedman, did he ever ask you what your annual income was?

Mr. SNODGRASS. Never.

Mr. SPRINGER. Did you ever have any conversations with Mr. Bloomgarden?

Mr. SNODGRASS. One or two when we would go to the men's room to take off the makeup. At one point we discussed our respective mothers who were schoolteachers, for example. At one point I had done some playwriting and he offered that if I had a script, if I would like, his uncle who is Kermit Bloomgarden, who is a New York producer, he would show it to him. I thanked him but it was not necessary.

Mr. SPRINGER. You never got into conversation with Bloomgarden about any of the questions?

Mr. SNODGRASS. No; none whatsoever.

Mr. SPRINGER. Or anything further about the program?

Mr. SNODGRASS. Nothing whatsoever.

Mr. SPRINGER. Did you ever sign a statement of any kind that you had never received the answers to the questions?

Mr. SNODGRASS. No.

Mr. SPRINGER. Were you ever asked to sign such a statement?

Mr. SNODGRASS. No, sir.

Mr. SPRINGER. When you received your check for \$4,000 did you sign a release of all liability against the program?

Mr. SNODGRASS. I had signed that when I first went in to take the test.

Mr. SPRINGER. Did that include all financial responsibility for irregularities such as this?

Mr. SNODGRASS. Yes. Wait. I would assume it does. I don't know. I would have to reread it and ask advise on it.

Mr. SPRINGER. Has your attorney ever read it?

Mr. DONTSON. I have never seen it.

Mr. SPRINGER. In your conversations with Freedman, did he ever tell you that what they were doing on that program was not a violation of the law, either State or Federal?

Mr. SNODGRASS. No, sir. Wait. Not that I remember.

Mr. SPRINGER. You have learned from your attorney since then that there is no violation of either State or Federal law?

Mr. SNODGRASS. There is no——

Mr. SPRINGER. You have been advised of that by your counsel?

Mr. SNODGRASS. Yes.

Mr. SPRINGER. You were advised by counsel, I take it, before you went in the grand jury?

Mr. SNODGRASS. Yes, sir.

Mr. SPRINGER. He advised you that if you told the truth there was no way in which you could be punished under law?

Mr. SNODGRASS. That is correct.

Mr. SPRINGER. In any discussions you had with Mr. Freedman, did he ever talk to you about the budget?

Mr. SNODGRASS. No; only this one time when it was too late.

Mr. SPRINGER. When he told you that you had ruined him?

Mr. SNODGRASS. That is right.

Mr. SPRINGER. Did he explain to you that there was a monthly figure which the production was allowed?

Mr. SNODGRASS. At this time he did; yes.

Mr. SPRINGER. That regardless of what was won on the program that is all they had to pay off?

Mr. SNODGRASS. I don't remember him saying that. I think he said if there was more than that won that Barry & Enright Productions would have to make up the rest.

Mr. SPRINGER. That is all, Mr. Chairman.

Mr. MACK. Mr. Moss.

Mr. MOSS. I have just one or two questions.

How many tie contests did you participate in? How many times did you tie with your opponent?

Mr. SNODGRASS. I would have to count.

Mr. MOSS. In each instance were you tied?

Mr. SNODGRASS. Yes, sir; in each instance.

Mr. MOSS. Were you given advance knowledge that you would tie?

Mr. SNODGRASS. Yes, sir; I was.

Mr. MOSS. Then we could reasonably assume that the champion had some assistance if he was to come up with the same score you received on each of these occasions.

Mr. SNODGRASS. That would be your assumption, Mr. Moss.

Mr. MOSS. Would you feel that it was an erroneous assumption?

Mr. SNODGRASS. No.

Mr. MOSS. Did you ever have any ideas that perhaps he might also be receiving assistance?

Mr. SNODGRASS. I must also say that I somewhat made the same assumption; yes, sir.

Mr. MOSS. Thank you.

Mr. MACK. Mr. Derounian.

Mr. DEROUNIAN. Mr. Snodgrass, the day you were asked to lose by the producers, were you told what score you should lose by?

Mr. SNODGRASS. Yes, sir.

Mr. DEROUNIAN. You have made a very honest witness. Thank you.

Mr. MACK. Mr. Devine.

Mr. DEVINE. Mr. Snodgrass, how old are you?

Mr. SNODGRASS. I am 37, sir.

Mr. DEVINE. Are you now married?

Mr. SNODGRASS. No, sir.

Mr. DEVINE. Were you married at the time you were on the program?

Mr. SNODGRASS. No, sir.

Mr. DEVINE. Would you tell this committee what your formal education was prior to appearing on the program?

Mr. SNODGRASS. Certainly. Grade school, high school in Harford County, Md., 3 years at Western Maryland College in Westminster, Md., bachelor of arts degree from Western Reserve University at Cleveland.

Mr. DEVINE. Have you had any legal training at all?

Mr. SNODGRASS. None whatsoever.

Mr. DEVINE. Did you have any advice from any source whatsoever on the preparation of these registered letters you sent to yourself?

Mr. SNODGRASS. As I said, I had done some playwriting before in my life and working on some occasions with a collaborator. This was one way we protected our material without having—it would be unfinished material that would be protected without getting a copy-right.

Mr. DEVINE. You have no legal training?

Mr. SNODGRASS. No, sir.

Mr. DEVINE. You apparently have some knowledge of the rules of evidence in that you can set down on paper something that is going to occur at a later time and receive it before the situation actually occurs. I want to compliment you on your judgment on that.

Mr. SNODGRASS. Thank you, sir.

Mr. MACK. Mr. Springer.

Mr. SPRINGER. Mr. Snodgrass, you took a test for this, is that true?

Mr. SNODGRASS. Yes, sir.

Mr. SPRINGER. Do you remember what your score was?

Mr. SNODGRASS. I was never told my score, sir.

Mr. SPRINGER. In college what was your IQ?

Mr. SNODGRASS. I have no idea, sir.

Mr. MACK. Mr. Lishman, do you have any further questions?

Mr. LISHMAN. Mr. Chairman, I think in fairness to everyone concerned that we should make a brief statement.

From the information we have, it appears that in many instances well-meaning people were entrapped in a situation. In many instances when they were first approached by the producers and were asked to participate in a fixed program, they refused. In some instances they refused repeatedly. All kinds of inducements were held out to them and not all of monetary nature. In some instances persons who would be interested, for example, in advancing the cause of medical research and other matters were told that they would have the opportunity while on the program to make some brief statement to further some extremely worthy cause in which they were interested, and which deserved the public's support. So I think that when we are appraising the testimony of these contestants who appeared before us and the truthful manner we now just have had, I think that should also be taken into consideration.

Mr. MACK. That completes your testimony of this witness?

Mr. LISHMAN. Yes, sir.

Mr. MACK. There are other witnesses who have been subpoenaed to appear today who are requested to be here tomorrow at 10 a.m. The committee will stand recessed until 10 a.m.

(Thereupon at 4:45 p.m., a recess was taken until Wednesday, October 7, 1959, at 10 a.m.)

INVESTIGATION OF TELEVISION QUIZ SHOWS

WEDNESDAY, OCTOBER 7, 1959

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON
LEGISLATIVE OVERSIGHT OF THE COMMITTEE
ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The special subcommittee met at 10 a.m., in the caucus room, Old House Office Building, Hon. Oren Harris (chairman), presiding.

Present: Representatives Harris, Mack of Illinois, Rogers of Texas, Flynt, Moss, Springer, Derounian, and Devine.

Also present: Robert W. Lishman, counsel to the subcommittee; Beverly M. Coleman, subcommittee principal attorney; Charles P. Howze, subcommittee attorney; Richard N. Goodwin, subcommittee special consultant; Herman Clay Beasley, subcommittee clerk; and Jack Marshall Stark, minority counsel.

The CHAIRMAN. The committee will come to order.

The first witness this morning will be Mr. Alfred Davis. Mr. Davis, will you come around, please?

Will you raise your hand and be sworn? Do you solemnly swear the testimony you give to this committee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DAVIS. I do.

The CHAIRMAN. Please have a seat. Will you state your name for the record.

TESTIMONY OF ALFRED DAVIS

Mr. DAVIS. Alfred Davis.

The CHAIRMAN. Will you give your address, Mr. Davis?

Mr. DAVIS. 9934 67th Road, Forest Hills, N.Y.

The CHAIRMAN. What is your occupation or business?

Mr. DAVIS. I am a public relations and publicity agent.

The CHAIRMAN. Were your offices in New York?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. Mr. Lishman.

Mr. LISHMAN. Yes, sir. Mr. Davis, were you at one time employed by the firm of Barry & Enright?

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. In what capacity were you employed?

Mr. DAVIS. Public relations and publicity.

Mr. LISHMAN. What did those duties require you to do?

Mr. DAVIS. They required me to publicize the Barry & Enright projects, Mr. Barry himself, and to advise on matters of public relations.

Mr. LISHMAN. Were you familiar with the "Twenty-one" quiz show?

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. Are you acquainted with the witness, Mr. Herbert Stempel?

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. Did you hear his testimony yesterday?

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. Did there come a time when Mr. Stempel prior to his appearance on the "Twenty-one" TV quiz show, told you that he had questions and answers to a particular show?

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. Was that day on or about December 5, 1956?

Mr. DAVIS. It was the day of his final appearance on the show.

Mr. LISHMAN. The date of his final appearance, when he lost. To whom did he lose, do you recall?

Mr. DAVIS. Van Doren.

Mr. LISHMAN. On that day, prior to the show in the evening, did he show you a piece of paper?

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. And what did that piece of paper contain?

Mr. DAVIS. To the best of my recollection it contained a rundown of that night's show.

Mr. LISHMAN. By rundown, you mean the questions and answers appeared on that piece of paper?

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. After Mr. Stempel had shown you this information, what did you do?

Mr. DAVIS. I discussed the matter with my partner.

Mr. LISHMAN. Who is he, please?

Mr. DAVIS. Art Franklin. Just to clarify that, that was until May 31, 1959.

Mr. LISHMAN. Can you state the substance of that discussion that you had with your partner?

Mr. DAVIS. I can state the conclusion fairly accurately. It was felt that if possible it was necessary to alter what appeared to be the inevitable result.

Mr. LISHMAN. What do you mean by alter what appeared to be the inevitable result?

Mr. DAVIS. We had, if possible, to have the game played on the basis on which we felt it had been played in the past.

Mr. LISHMAN. After your discussion with your partner, Mr. Franklin, did you have a meeting with Mr. Enright?

Mr. DAVIS. My partner had a meeting with him.

Mr. LISHMAN. Were you present at that meeting?

Mr. DAVIS. No, sir.

Mr. LISHMAN. Did you ever tell Mr. Enright that Mr. Stempel had shown you the questions and answers?

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. What did Mr. Enright say to you?

Mr. DAVIS. He said something like, "If my own wife had confronted me with such an accusation, I would have to give her the same reaction as I gave to Art," which would be one of what would you say, complete denial.

Mr. LISHMAN. Complete denial?

The CHAIRMAN. I didn't understand what you said. He would have to give the same answer as he gave to whom?

Mr. DAVIS. As he had given to my partner when he had originally talked to him before this final show.

Mr. LISHMAN. Mr. Davis, you testified before the New York County grand jury, did you not?

Mr. DAVIS. Yes sir.

Mr. LISHMAN. Are you quite positive that is the answer that was given to you by Mr. Enright on that occasion?

Mr. DAVIS. As far as I can remember. This was in December of 1956. That is almost 3 years ago.

Mr. LISHMAN. I would like to refresh your recollection, Mr. Davis—

Mr. DAVIS. Please do—

Mr. LISHMAN. By reading from your testimony before the New York grand jury.

The CHAIRMAN. Mr. Lishman, for the record, so that the record will be clear, are the answers that have been given here apparently in some way—

Mr. LISHMAN. At variance with the grand jury testimony.

The CHAIRMAN. The same testimony he gave to the grand jury?

Mr. LISHMAN. In certain respects; not in all.

The CHAIRMAN. Very well. You may proceed.

Mr. LISHMAN. In your testimony before the grand jury on January 20, 1959, in answer to questions by Assistant District Attorney Stone:

Well, as a result of this information, did you then speak to Mr. Enright?

I spoke to Mr. Enright a few weeks after that and told him what had happened.

What did he say?

Well, he was rather equivocal.

When you say he was equivocal, do you recall what he said or the substance of what he said?

I remember, about the only thing I could recall as a reply that I got was that I referred to a visit that Art Franklin had paid him previously and in which he had hinted at what Stempel had told us, not actually coming out and saying it, and I told him that this is what Art Franklin had been hinting at was such and such and so and so which I just told you about, Stempel and the answers, and I said you should have understood what Art Franklin meant when he hinted that there was something wrong regarding Stempel, and he said—Well, this is the closest thing I could say he gave me as an answer. "Well, if my wife were to confront me with this accusation, I would have to be just as circumspect."

Mr. DAVIS. Sir, is what I have just testified at variance with that? It may be less complete. You did not ask me questions which led me to give you that entire story. I don't think that is fair.

Mr. LISHMAN. Did Mr. Stempel offer to you a proposition that he should be permitted to play honestly on this game?

Mr. DAVIS. A proposition?

Mr. LISHMAN. Well—

Mr. DAVIS. He wanted an opportunity to play honestly.

Mr. LISHMAN. I will rephrase the question. Did Mr. Stempel ever come to you and request that arrangements be made that he be allowed to play the game honestly?

Mr. DAVIS. There were many conversations during that period with Mr. Stempel who had made sort of his headquarters at our office at

that time. This was a constant refrain of his, once he had revealed, as he claimed, that the show was rigged.

Mr. ROGERS. Mr. Chairman, he can answer a question like that.

Mr. DAVIS. I said many times Stempel had asked or expressed his great desire that the show be played on a legitimate basis. I don't remember any one specific time when he asked that. I don't think the question was very clear, sir. It wasn't to me.

The CHAIRMAN. I think the question was very clear. You may state that you do not understand the question, if you like.

Mr. DAVIS. I would like to state that.

The CHAIRMAN. But otherwise, I think it would be better for you to confine yourself to answering the questions.

Mr. LISHMAN. I will repeat the question. Did Mr. Stempel at any time ever come to you and request that arrangements be made that he be permitted to play the game, "Twenty-one," honestly and without prior assistance? Is that clear?

Mr. DAVIS. Yes, sir. One specific occasion that I do remember, the only one that I do remember specifically, was the same occasion on which he showed me the answers. He was quite agitated.

The CHAIRMAN. Did he make such a request of you at that time?

Mr. DAVIS. Yes; I was about to try to explain that.

The CHAIRMAN. You could answer "Yes" or "No."

Mr. DAVIS. Well, I don't understand what you mean by proposition. Did he make a proposition?

Mr. LISHMAN. I rephrased the question and you had it read to you twice in a different form. I submit, Mr. Chairman, the question is very clear. I think we have a rather evasive witness.

The CHAIRMAN. Do you want the question read back to you?

Mr. DAVIS. Yes, sir.

(The question was read by the reporter.)

Mr. DAVIS. The answer to that is "Yes."

The CHAIRMAN. All right.

Mr. LISHMAN. Now, Mr. Davis, on March 1, 1957, did you have a meeting with Mr. Enright at which you discussed the situation involving Mr. Stempel's receiving assistance on this program?

Mr. DAVIS. On March 1?

Mr. LISHMAN. On March 1, 1957.

Mr. DAVIS. I don't remember any date. I remember—it must have been before then. My impression is that it was not too long after he had been on the program.

Mr. LISHMAN. Let us——

Mr. DAVIS. I had one meeting, if I may say, with Enright at which I discussed this.

Mr. LISHMAN. I will rephrase this another way. Did there come a time when Barry & Enright, to your knowledge, were engaged in negotiations with NBC to sell them a certain so-called property?

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. Was it during the course of these negotiations with NBC that you had a meeting with Mr. Enright at which you discussed the problem that was raised by Mr. Stempel having received assistance on the show, "Twenty-one"?

Mr. DAVIS. Are you referring to the meeting I mentioned before at which I told Enright that I knew Stempel had asked?

Mr. LISHMAN. No; I am referring to a subsequent meeting.

Mr. DAVIS. A subsequent meeting? In March?

Mr. LISHMAN. I will say on or about March 1, 1957.

The CHAIRMAN. If you do not remember the exact date, go ahead and answer the question if you can.

Mr. DAVIS. Yes, sir.

I remember being summoned to Enright's office sometime in March at which his lawyer, Irving Cohen, was present. Mr. Franklin went with me. Mr. Enright was there. And another officer of Barry & Enright was there, Mr. Stettler. If this is the meeting you are referring to, sir——

Mr. LISHMAN. Yes; it is.

Mr. DAVIS. All right.

We were told by Mr. Enright that Herb Stempel had come in that day with an attempt to blackmail him for \$50,000.

Mr. LISHMAN. What else was said at that meeting?

Mr. DAVIS. I believe we discussed an obvious adverse public relations effect of such situation becoming public.

Mr. LISHMAN. Did you discuss specific measures which should be taken to keep this news about the Stempel fix from reaching the newspapers?

Mr. DAVIS. Yes, sir; I remember now.

Another thing, it was felt that possibly Stempel was in a very disturbed and agitated state because of various personal problems, and that it might be possible to talk to him directly and make him see the recklessness of such a course of activity.

Mr. LISHMAN. Was there discussed at that meeting the possibility that publicity about Mr. Stempel would be detrimental to the negotiations that were then being conducted by Barry & Enright for the sale of the show?

Mr. DAVIS. I couldn't swear that was specifically discussed there. I am sure it was uppermost in everyone's mind.

The CHAIRMAN. You say you are sure it was uppermost in everyone's mind?

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. Now, Mr. Davis, in the fall of 1957 did it come to your attention that Mr. Stempel's story had been given to certain newspapers?

Mr. DAVIS. Yes, sir. Excuse me, sir. It had come to my attention before that. In the spring—in the summer of 1957, the early summer.

Mr. LISHMAN. How did it come to your attention?

Mr. DAVIS. Well, reporters were questioning my client, Enright.

Mr. LISHMAN. Had a piece appeared in any newspaper at that time?

Mr. DAVIS. I don't remember, sir.

Mr. LISHMAN. Did you have some discussions with your partner, Mr. Franklin, about this matter?

Mr. DAVIS. Which one?

Mr. LISHMAN. About this Stempel having gone to the newspapers.

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. Did Mr. Franklin tell you that he had a call from the executive editor of the New York Post telling him that Stempel had been to him?

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. Would you state the substance of that conversation that you had with your partner, Mr. Franklin?

Mr. DAVIS. He told me that Stempel, as I recall it, had been to the Post and had told him everything that he possibly could about the show being rigged.

Mr. LISHMAN. Do you know whether the Post published that story?

Mr. DAVIS. Not at that time, I did not, sir.

Mr. LISHMAN. Do you know when they did publish it?

Mr. DAVIS. It was the weekend or the week before Labor Day of 1957; 1958.

Mr. LISHMAN. One year later?

Mr. DAVIS. It was 1 year ago, approximately.

Mr. LISHMAN. One year after the executive editor of the New York Post had told your partner, Mr. Franklin, that he knew——

Mr. DAVIS. Excuse me, sir. That was May 1958 in that case.

Mr. LISHMAN. Wait a minute——

Mr. DAVIS. When was Stempel on? In 1956?

Mr. LISHMAN. His last appearance, as I understand it, was December 5, 1956.

Mr. DAVIS. The New York Post situation arose, then, in the summer of 1957.

Mr. LISHMAN. Yes, sir.

Mr. DAVIS. I don't remember when the story broke, whether it was 1958 or 1959; 1957 or 1958.

Mr. LISHMAN. At the time that Mr. Franklin had his discussions with the executive editor of the New York Post, do you remember whether the story appeared at or about close to that time?

Mr. DAVIS. No, sir.

Mr. LISHMAN. It appeared sometime later?

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. A long time later?

Mr. DAVIS. Months. At least months later.

Mr. LISHMAN. Would you say 8 or 9 months later?

Mr. DAVIS. It depends on when the scandal broke. If that was in 1957, then it appeared about 6 months later.

Mr. LISHMAN. The scandal broke in August 1958, according to the newspaper accounts that we have checked.

Mr. DAVIS. Then it would have been a year.

Mr. LISHMAN. At or about the time that Mr. Franklin told you that he had been contacted by the editor of the Post, is it also a fact that the Journal American had contacted Mr. Franklin with respect to the Stempel story?

Mr. DAVIS. At a later time.

Mr. LISHMAN. About what date was that?

Mr. DAVIS. Several months later. I would say in the late summer of 1957.

Mr. LISHMAN. Did Mr. Franklin discuss the contact of the Journal American with you? Did you have a discussion with Mr. Franklin about what happened?

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. What was the substance of that discussion?

Mr. DAVIS. The substance was again that this would be very damaging to our client.

Mr. LISHMAN. Did you know whether Mr. Barry or Mr. Enright were informed of these newspaper contacts at or about that time?

Mr. DAVIS. At the time each occurred, the client was informed; yes, sir.

Mr. LISHMAN. When you told Mr. Enright about this, what did he say?

Mr. DAVIS. I can remember no specific reactions, except that in each case he assumed a rather indignant attitude and seemed to feel that he was being treated unfairly.

I would just like to mention that Mr. Enright, except possibly for that very, I think, hazy half admission at that meeting which we discussed before, has never subsequently admitted anything about the program. I can't explain.

The CHAIRMAN. You mean to yourself? You mean to you?

Mr. DAVIS. Yes, sir. I might venture to say to no one.

Mr. LISHMAN. Mr. Davis, did you or your partner, Mr. Franklin, issue any denial to these newspapermen who contacted you with respect to the story?

Mr. DAVIS. I myself did not issue any denial. I couldn't say exactly what Mr. Franklin's response was, whether it was a denial, you would have to check that with him, or just the fact that he informed them that there were implications to the story much more complex than the mere fixed program, such as personal implications for Stempel and so forth.

Mr. LISHMAN. At or about this time, did you get a call from a press representative of NBC?

Mr. DAVIS. I was ostensibly being called by a press representative from NBC.

Mr. LISHMAN. Do you remember a particular call from a press representative of the NBC who told you that the Journal American had the story on Stempel and something had to be done about it?

Mr. DAVIS. Know that Ellis Moore—no, sir: I did not get a call from NBC. I got a call from Mr. Dan Enright, who had been called from NBC by someone named Ellis Moore, who is an executive in the press department, who had been told this.

Mr. LISHMAN. Did there come a time when there was a meeting with a Mr. Eiges and a Mr. Moore and Mr. Enright, yourself and others?

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. Would you please identify who Mr. Moore is and Mr. Eiges?

Mr. DAVIS. Mr. Moore is, I believe, assistant director of public relations at NBC. I could be wrong about that. Publicity, not public relations. Mr. Eiges is vice president in charge, I believe, of publicity.

Mr. LISHMAN. Do you recall the approximate date of that meeting?

Mr. DAVIS. I think that was in the late summer of 1957. I seem to have lost a year someplace.

Mr. LISHMAN. Do you recall who called that meeting?

Mr. DAVIS. I think it was mutually agreed that it was necessary by all three parties who were Barry & Enright, NBC, and our own organization.

Mr. LISHMAN. Did a friend of Mr. Moore's on the Journal American call him up at or about that time and tell him to get ready for a big storm?

Mr. DAVIS. I don't remember that, sir. I would not be surprised.

Mr. LISHMAN. This is not to impeach the witness' testimony, but merely to refresh his recollection. I would like to read a short extract from his testimony before the grand jury. In answer to a question, Mr. Davis stated:

No, but apparently a friend of Ellis Moore since NBC was involved in this situation had called Ellis Moore to inform him that such a thing was in the works. In other words, saying be prepared for a—for the storm.

Does that refresh your memory?

Mr. DAVIS. May I clarify that?

Apparently those were my words. What I meant is that I don't think that Ellis Moore said to me or to anybody, "be prepared for a storm." My interpretation was that is what the message was.

Mr. LISHMAN. After Mr. Moore received those calls from his friend on the Journal American, did you have a meeting with NBC representatives attended by yourself Mr. Enright and others?

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. Who else was present at that meeting?

Mr. DAVIS. Besides myself.

Mr. LISHMAN. Yes.

Mr. DAVIS. Ellis Moore, Syd Eiges, Art Franklin, Dan Enright, possibly—and I don't remember, I only say this because there were several meetings over a course of several years that various people were present, and I can't be sure which meetings each were at—I believe possibly Bob Goldwater of NBC was at this one.

Mr. LISHMAN. Who was the last one?

Mr. DAVIS. Bob Goldwater, who was the press representative at NBC for "Twenty-one."

Mr. LISHMAN. Was this meeting concerned with the fact that the Journal American was in the process of writing a story on the Stempel exposure?

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. What was the nature of the discussion at this meeting?

To make it more specific, was the purpose for the meeting to devise ways and means of preventing that exposure?

Mr. DAVIS. Yes, sir, certainly.

Mr. LISHMAN. What specific measures did you discuss that should be taken to prevent the exposure?

Mr. DAVIS. Would you refresh my memory?

Mr. LISHMAN. Did you suggest one way of doing it was to smear Stempel and prove that he was a liar?

Mr. DAVIS. Well, I might not agree with the choice of terms. I would say that was a consideration. The fact that Stempel—

Mr. LISHMAN. Did anybody from NBC indicate at that meeting that they wanted a real thorough investigation to find out whether Mr. Stempel was telling the truth?

Mr. DAVIS. No, sir.

Mr. LISHMAN. Did any NBC representative ask you, or anyone present from Barry & Enright?

Mr. DAVIS. To my recollection, not at that meeting. There was a subsequent meeting at which somebody from NBC asked. That was much later in the game. I don't remember whether anybody at that meeting asked.

Mr. LISHMAN. But at a later meeting, did a representative of NBC ask Barry & Enright or its employees as to whether Stempel's story was true?

Mr. DAVIS. I don't remember anybody asked the specific question, but they wanted to know. They were hesitant. If I seem evasive, sir, I would like to clarify the situation.

Mr. LISHMAN. Very good.

Go ahead, we want to get the truth.

Mr. DAVIS. These incidents occurred over a period of about 2½ years. There were so many meetings and so much confusion and so many people involved and so many measures, countermeasures and strategies, that I would have to be a better man than I am to remember them all in strict chronological order; even anything approximating word for word.

Mr. LISHMAN. Mr. Davis, we do not want to hold you down to a chronological timetable on this. But we do want to get the substance of what went on in these various discussions.

Mr. DAVIS. Can I try to answer this question?

Mr. LISHMAN. Yes.

Mr. DAVIS. The reason I say I don't remember anybody specifically asking was that there are other ways of finding out that somebody wants something than by somebody asking for it. In other words, we were at that meeting to issue our reply to a story which had appeared that day. The people at NBC, by their apparent reluctance to issue a statement backing Barry & Enright, obviously were calling for something more than just our desire for them to do so.

It was obvious that we had to tell them that Stempel, we felt, was not a reliable witness or source because of certain—this would be true by certain evidence which existed. This was the extent of it.

Mr. LISHMAN. Mr. Davis, if I may interrupt, what you are talking about now is a later meeting in 1958?

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. The questions I addressed to you were about this earlier meeting in 1957 which resulted from the fact that Mr. Moore had received word from a friend on the Journal-American that a storm was about to break. That was some time late in the summer of 1957?

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. It was at or about that time, or shortly afterward, that you had your first meeting with Mr. Moore, Mr. Eiges, Mr. Enright, Mr. Franklin, and yourself, and possibly one or two others?

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. At that meeting did any representative of NBC—and Mr. Moore and Mr. Eiges were such—did either of those gentlemen ask you or anyone representing Barry & Enright, Is Stempel's story true?

Mr. DAVIS. As far as I can recall, sir, it was generally assumed by them that his story was not true. The occasion would not have occurred to them to ask.

Mr. LISHMAN. The question was not asked?

Mr. DAVIS. No, sir.

Mr. LISHMAN. The question was not asked?

Mr. DAVIS. It was not.

Mr. LISHMAN. Was a denial at that time made by any representative of Barry & Enright that Stempel's story was not true?

Mr. DAVIS. I don't recall that any was called for or made.

Mr. LISHMAN. Did Mr. Enright volunteer any statement to the NBC people present that Stempel's story was not true?

Mr. DAVIS. He may have, sir. I do not remember that meeting clearly.

The CHAIRMAN. Mr. Davis, if you would like to clarify any further answers to this question, please feel at liberty to do so.

Mr. DAVIS. No, sir.

The CHAIRMAN. If you recall anything else that happened at this particular meeting, feel free to tell precisely what went on.

Mr. DAVIS. I would be very happy to, sir. It just happens that this is one meeting of which I remember very little.

Mr. LISHMAN. What was the result of this meeting in 1957? How did it conclude?

Mr. DAVIS. I don't even remember the result.

Mr. LISHMAN. Was it a general agreement that everybody would sit tight and play it by ear?

Mr. DAVIS. That sounds right.

Mr. LISHMAN. Was there a subsequent meeting involving "Twenty-one" on the evening of the day that Stemple's story first broke in the newspapers?

Mr. DAVIS. Sir, that is the meeting I have referred to.

Mr. LISHMAN. That is the second meeting.

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. Who attended that meeting?

Mr. DAVIS. Ken Bilby of NBC, who I believe is vice president in charge of advertising and exploitation. Syd Eiges. You asked me who was at that meeting?

Mr. LISHMAN. Yes.

Mr. DAVIS. Myself, Mr. Franklin, Mr. Enright, Mr. Cohen.

Mr. LISHMAN. Was there a Mr. Ervin?

Mr. DAVIS. Tom Ervin of NBC, legal counsel of NBC, I don't know his exact title.

Mr. LISHMAN. Mr. Barry was not present at that meeting?

Mr. DAVIS. Mr. Barry was in Chicago at that time.

Mr. LISHMAN. What was discussed at this conference which was approximately after the first one I had been inquiring about?

Mr. DAVIS. We discussed the necessary steps to counteract the very damaging publicity which had appeared that day. If you would like me to be brief, statements were discussed which were to be made by Barry & Enright, and also by NBC.

Mr. LISHMAN. Yes.

Mr. DAVIS. It was suggested by Mr. Bilby that legal action be taken against the New York World-Telegram and Sun for having broken the story.

Mr. LISHMAN. What was Mr. Enright's reaction to this idea; that they should take such action?

Mr. DAVIS. It was favorable.

Mr. LISHMAN. At that conference was it decided, in other words, that there was no question now of sitting tight and playing it by ear, but that you had to take some positive, affirmative action?

Mr. DAVIS. Yes, sir. One other thing was decided, sir, if I remember. It was decided that we see the district attorney or his assistant the following morning. An appointment was made, I believe, Mr. McKay, a member of the legal firm for NBC. I believe that is his name.

Mr. LISHMAN. At this second meeting did anyone from NBC or anyone in the room ask Mr. Enright if the story appearing in the paper was true?

Mr. DAVIS. This is what I was trying to explain before. By their reluctance at first to issue a strong statement backing Barry & Enright, they made it quite obvious that they wanted something more than mere indignation on our part, and we volunteered. I say we; I don't remember who. Somebody on our team volunteered the information that there was evidence that Stempel was not a reliable witness. I don't know whether we were specific as to what the evidence was. As a matter of fact, I remember there was a situation in which it was felt necessary to get tape recordings and play them at that time, and it was impossible to get them because they were in the bank somewhere and the vault had closed, and we tried to get the vice president of the bank to open the vault and he couldn't do it.

Mr. LISHMAN. Mr. Davis, did anyone at that meeting say flatly that Stempel was telling a lie, as reported in the story, when he stated that he had received prior assistance on the television show, "Twenty-one"?

Mr. DAVIS. To my recollection, that type of answer was never required at any point.

Mr. LISHMAN. In other words, no one ever asked the question, Was Mr. Stempel fixed in advance on the TV show, "Twenty-one"?

Mr. DAVIS. I can say positively that I am sure nobody asked that question.

Mr. LISHMAN. Nobody asked that question. Did they ask a question similar to that?

Mr. DAVIS. As far as I can recall, the most that they asked was, What about this guy, Stempel?

Mr. LISHMAN. In other words, most of the emphasis was placed on an effort not to ascertain whether or not Stempel's story was true, but on how to take the sting out of it; is that correct?

Mr. DAVIS. I don't think it would be fair to say that, sir. I hold no brief for NBC, but I think if they had any idea that it were true that they certainly would have adopted a different attitude.

Mr. LISHMAN. Was it subsequent to this meeting that on August 8 NBC issued its press release which was read into the record yesterday, that after a thorough investigation they found that the charges made by Mr. Stempel were unfounded, and that they had complete confidence in the integrity of Barry & Enright, and of the show, "Twenty-one"?

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. Following this August meeting, were there any subsequent meetings between representatives of Barry & Enright and NBC with respect to the TV show, "Twenty-one"?

Mr. DAVIS. I don't believe there was more than one or two at which I was present. If there were—I believe not. It was a very confused time. I don't think I slept for several weeks, sir.

Mr. LISHMAN. When it came time for you to appear before the district attorney and you had been summoned, did you have a meeting with Mr. Enright and an attorney?

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. What was the name of that attorney?

Mr. DAVIS. Edwin Slote.

Mr. LISHMAN. Who else attended that meeting?

Mr. DAVIS. Art Franklin.

Mr. LISHMAN. Do you remember what was said at that meeting?

Mr. DAVIS. We asked what to do. We did not wish to testify. We did not wish to have to testify as to anything that would damage our client. We were advised by Mr. Slote in Mr. Enright's presence—I should make it clear that Slote was acting more as our attorney than as Barry & Enright's. I am not sure who he was representing at this particular meeting because he advised us if and when we testified to deny certain things that we knew were true.

Mr. LISHMAN. Did he tell you to commit perjury before the grand jury?

Mr. DAVIS. He called it preparing the witness.

Mr. LISHMAN. Did he tell you to deny matters which you knew were true?

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. Did he tell you to do this while you were under oath before the grand jury?

Mr. DAVIS. I could not swear to that, sir.

Mr. LISHMAN. When you received this advice, what did you say?

Mr. DAVIS. We hedged. We did not give any clear reply. Seeing as we both were quite confused at the time, they left. I believe Slote felt that he had not completed the job.

Mr. LISHMAN. Was this at subsequent meetings?

Mr. DAVIS. Incidentally, after Enright had left, he said he was no longer representing Enright. That Enright had given him his notice. He didn't care about Enright. He was just concerned with us.

Mr. LISHMAN. Did you receive this advice from Mr. Slote to the effect that you were not to testify truthfully before the grand jury that you knew Stempel had received questions and answers and what the circumstances were which led you to believe that he had received the questions and answers?

Mr. DAVIS. I don't know if the grand jury came in, but in my mind at the time the district attorney's office and the grand jury were all lumped into one. That is all I was concerned with. He did tell me what you say. I don't know whether he mentioned grand jury.

Mr. LISHMAN. Mr. Witness, in order to be perfectly fair, I would like to show you a portion of the grand jury testimony and ask you if that won't refresh your recollection.

(Document handed to witness.)

Mr. DAVIS. I would like to apologize for my answer not seeming to be what it actually was, which was the same as that. In effect, yes, because it was downtown that we were talking about. That included to me the grand jury.

Mr. LISHMAN. And that meant grand jury.

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. Did you agree to follow this advice?

Mr. DAVIS. No. As I say, we gave him no answer. We seemed to be trying to digest what he had told us.

Mr. LISHMAN. Did this attorney subsequently advise you to get out of town?

Mr. DAVIS. Yes, sir.

Mr. LISHMAN. Where did he tell you to go?

Mr. DAVIS. As far away as possible.

Mr. LISHMAN. Mr. Chairman, I have no further questions.

Mr. ROGERS. Mr. Chairman, which attorney was that?

Mr. LISHMAN. Mr. Slote.

Mr. DEROUNIAN. Is he still practicing law in New York State?

Mr. LISHMAN. I don't know.

Mr. DAVIS. I don't know, sir. I have not had contact with him for over a year.

Mr. DEROUNIAN. This is apart from the instant proceeding, but any attorney who advises his client as this one has should not be practicing law, and it is a matter for the Bar Association of the City of New York to take up.

The CHAIRMAN. I hope we do not get too far away from the purpose of this investigation and the matters concerned here, as serious as this may be, but it probably belongs to some other body to go into.

Mr. Moss.

Mr. Moss. Mr. Chairman, I find it rather difficult to follow the recent sequence of questions and answers. It probably is quite clear to counsel and to Mr. Davis. But the grand jury minutes were shown to Mr. Davis and he confirmed an answer. I have no knowledge as to what that answer was. I wonder if he might have that clarified.

The CHAIRMAN. The Chair might state that he is trying to indicate that to a certain degree such line of testimony would be appropriate, but I think beyond the purposes of this hearing it would not be desired. As I understand, the question referred to the gentleman was whether or not such advice was given for him to or not to testify before the grand jury as well as take other action. Is that not true?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. Does that clear it up to the gentleman now?

Mr. Moss. The minutes have clarified it completely.

The CHAIRMAN. Is that all, Mr. Lishman?

Mr. LISHMAN. Yes, sir.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Mr. Davis, at these meetings that you had at NBC, together with the staff of Barry & Enright, isn't it true that you and the Barry & Enright organization made every effort to deceive NBC as to the true status of Stempel?

Mr. DAVIS. I would have to say "Yes," sir.

May I clarify my answer.

Mr. SPRINGER. Yes.

Mr. DAVIS. We did not make any great efforts to deceive them. We did not make any efforts to enlighten them.

Mr. SPRINGER. What, in effect, you did not do was to tell them the truth about this situation?

Mr. DAVIS. Yes, sir.

Mr. SPRINGER. Is it your opinion now that Stempel was not then and is not now a stable witness?

Mr. DAVIS. Yes, sir.

Mr. SPRINGER. First of all, did you hear the testimony given by Mr. Stempel yesterday?

Mr. DAVIS. Yes, sir.

Mr. SPRINGER. Is the testimony given by Mr. Stempel as of yesterday substantially true?

Mr. DAVIS. In the one, to me, crucial point, whether or not he was given the answers, it was not to my knowledge true. There were many occasions on which I am sure he was way off base. As a matter of fact, I can be very specific about it. He said that on several occasions he had told me what was going to happen on the succeeding show. This happened only once.

Mr. SPRINGER. May I ask if these are the only two conversations in which you were present with NBC.

Mr. DAVIS. In relation to Stempel, they were the two ones. There may have been some subsequent ones after the thing had broken in the press and at times we would have to call NBC to coordinate things and so forth. We were in some contact with them.

Mr. SPRINGER. From any of the conversations at which you were present with NBC, do you have any reason to believe now that NBC was at any time aware that there was a fix on the "Twenty-one" program?

Mr. DAVIS. I have no reason to believe that, sir.

Mr. SPRINGER. Insofar as you know, did NBC, on its own initiative, make any attempt to determine whether or not Stempel was telling the truth?

Mr. DAVIS. I do not know.

Mr. SPRINGER. What is Ellis Moore's title with NBC?

Mr. DAVIS. I believe he is either director or assistant director of press.

Mr. SPRINGER. Who are Tom Ewing and Ken Bilby?

Mr. DAVIS. Tom Ewing I do not remember, although the name is not entirely unfamiliar. I just can't place him.

Bilby is vice president in charge of, I believe, advertising and publicity. The title could be wrong.

Mr. SPRINGER. Insofar as you know, no one else in the NBC organization inquired about this question of a fix on the "Twenty-one" program?

Mr. DAVIS. Yes, sir. As far as I know, that is true.

Mr. SPRINGER. Who was Sid Eiges?

Mr. DAVIS. He is vice president in charge of press at NBC.

Mr. SPRINGER. Did anyone in an executive capacity, or at the policy level at NBC make any inquiry with reference to this matter?

Mr. DAVIS. Not to my knowledge, sir.

Mr. SPRINGER. I take it, Mr. Davis, from what you have said, that generally the concern of NBC in these conferences was to get around unfavorable publicity.

Mr. DAVIS. Yes, sir.

Mr. SPRINGER. This was their concern rather than going to the heart of the matter and investigating on their own initiative as to

whether or not there was a fix on the "Twenty-one" program. Is that about right?

Mr. DAVIS. I would say so, sir.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Texas. Mr. Davis, how old a man are you?

Mr. DAVIS. Thirty-six.

Mr. ROGERS of Texas. Thirty-six?

Mr. DAVIS. Yes, sir.

Mr. ROGERS of Texas. Your full name is what?

Mr. DAVIS. Alfred Davis.

Mr. ROGERS of Texas. Alfred Davis?

Mr. DAVIS. Yes, sir.

Mr. ROGERS of Texas. Is that the name you were born under?

Mr. DAVIS. Yes, sir.

Mr. ROGERS of Texas. Where were you born?

Mr. DAVIS. New York, sir.

Mr. ROGERS of Texas. In New York City?

Mr. DAVIS. Yes, sir.

Mr. ROGERS of Texas. Have you ever been indicted for any crime?

Mr. DAVIS. No, sir.

Mr. ROGERS of Texas. Have you ever been in any trouble with the law at all?

Mr. DAVIS. No, sir.

Mr. ROGERS of Texas. You said something about that you had not slept much during a certain period here when this thing broke. Why was it that you had not slept?

Mr. DAVIS. I feel that I was very personally involved in the welfare of Barry & Enright for many reasons, one of which was financial, one of which was there was a personal relationship of 8 or 9 years that existed with these people, that I was very close friends with possibly a dozen young people on their staff who had just started their careers and who would be severely damaged by these revelations.

Mr. ROGERS of Texas. Were you convinced at that time that there was some fraud or misrepresentation in regard to the "Twenty-one" program?

Mr. DAVIS. I definitely knew it, sir. I had known for quite some time.

Mr. ROGERS of Texas. And you have not changed your mind since then by virtue of any information that has come out?

Mr. DAVIS. No, sir.

Mr. ROGERS of Texas. Thank you very much.

The CHAIRMAN. Mr. Derounian.

Mr. DEROUNIAN. Mr. Davis, were you an employee of Barry & Enright or did you have a piece of it as public relations man?

Mr. DAVIS. Our publicity and public relations agency was employed by Barry & Enright. They were an account of ours. We had several accounts.

Mr. DEROUNIAN. Are you still a part of the same organization in public relations with Mr. Franklin?

Mr. DAVIS. No, sir. On June 1 of this year I opened my own office.

Mr. DEROUNIAN. No further questions.

The CHAIRMAN. Mr. Moss.

Mr. Moss. Mr. Davis, you indicate that you were convinced that there was in fact a fix on the program?

Mr. DAVIS. Yes, sir.

Mr. Moss. When did you first become convinced?

Mr. DAVIS. I became convinced when Stempel showed me what seemed to me irrefutable evidence of it the day that he lost on the show. He showed me what, to my recollection, pretty accurately, were the questions and answers for that evening.

Mr. Moss. You indicated, in response to a question, to Mr. Springer that only on one occasion did Mr. Stempel show you material or discuss it with you.

Mr. DAVIS. Yes, sir. Prior to that, sir, he had told me that the show was rigged, in his words. I didn't know whether to believe him or not.

Mr. Moss. You indicated that you felt he was an unreliable witness?

Mr. DAVIS. Yes, sir.

Mr. Moss. For, among other grounds, his statement—and I don't recall what that statement was—my recollection of it was that he told the committee that on a number of occasions he had discussed this matter with you.

Mr. DAVIS. That on a number of occasions, to my recollection, he said he had told me what was going to happen.

Mr. Moss. Is that correct? Did he tell you?

Mr. DAVIS. No, sir. Only on one occasion.

Mr. Moss. A little earlier you made the statement that on many occasions—in fact it was a constant refrain of his—this discussion of irregularity and the expression of a desire to have the show on an honest basis. Is that a correct statement?

Mr. DAVIS. That began when he was told he was going to lose. He did not complain about the dishonesty of the show until that point.

Mr. Moss. He did complain then?

Mr. DAVIS. Yes, sir.

Mr. Moss. On these meetings with officials of NBC and the Barry & Enright organization, you say that you cannot recall any specific instances when NBC asked whether or not the charges were true.

Mr. DAVIS. Yes, sir.

Mr. Moss. Did they seem to be concerned with whether or not the charges were true?

Mr. DAVIS. On one occasion. On the occasion, the night after the story broke in the newspapers, we had this meeting to decide on our countermeasures.

Mr. Moss. This was more than a year after they had first received information indicating that charges were being made that the show was fixed?

Mr. DAVIS. Yes, sir.

Mr. Moss. On that occasion—

Mr. DAVIS. Excuse me, sir.

I still seem to have lost a year somewhere. It could have been only a few months or it could have been a year and a few months. It was sometime after.

Mr. Moss. As I recall, the New York Post contacted your organization.

Mr. DAVIS. Yes, sir.

Mr. Moss. And indicated they had received information, and there was approximately a year elapsed before there was any publication of this information in any newspaper?

Mr. Davis. There again that was either about 6 months or a year and 6 months. I can't recall.

Mr. Moss. All right, 6 months.

During this period there was no direct request to your knowledge by NBC as to the substance of the charges, whether they were true or false?

Mr. Davis. No, sir.

Mr. Moss. But there was great concern expressed as to the probable unfavorable impact should this become public?

Mr. Davis. Yes, sir.

Mr. Moss. Then would you conclude that perhaps NBC was at that point willing to be deceived and not make a specific inquiry as to the truthfulness of the charges?

Mr. Davis. Well, at the risk of seeming evasive, I would like to give what might seem like a long answer.

NBC is a very large organization. I don't think you could say this is NBC unless it is General Sarnoff. And I don't know whether he was concerned with what was going on. There are various individuals who make up the organization. I don't know if in an organization like that everybody knows what is going on at all times.

Mr. Moss. Let us bring it down to what we are discussing.

Mr. Davis. Yes, sir.

Mr. Moss. The responsible officials of NBC who were in contact with you and with the Barry & Enright organization, according to your testimony, were primarily concerned with the unfavorable impact rather than the truthfulness of the charges?

Mr. Davis. Yes, sir.

Mr. Moss. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Mr. Davis, can you give the committee the approximate date on which NBC bought this production and took it over itself?

Mr. Davis. I believe it was around May 1957. It may have been later.

Mr. SPRINGER. From that date forward, this was NBC's show by right of ownership, was it not?

Mr. Davis. Yes, sir.

Mr. SPRINGER. Did any part of the Barry & Enright organization continue to work on the production?

Mr. Davis. The entire organization continued producing the programs as employees of NBC.

Mr. SPRINGER. As employees of NBC?

Mr. Davis. Yes, sir.

Mr. SPRINGER. Then these conversations with NBC about which you have testified took place after NBC had become the owner of the show?

Mr. Davis. Yes, sir.

Mr. SPRINGER. Mr. Davis, insofar as you know, was there ever a time when it was commonly known in the trade, advertising, television or radio, that these shows were being fixed?

Mr. DAVIS. I don't think anybody believed it of "Twenty-one." Perhaps strangely. I think I certainly had my suspicions about certain other shows.

Mr. SPRINGER. Did you have any suspicions about "Dotto?"

Mr. DAVIS. I never watched "Dotto." I think I would have assumed that very few shows were above reproach.

Mr. SPRINGER. Did you have any suspicion about "Tic-Tac-Dough?"

Mr. DAVIS. No.

Mr. SPRINGER. I take it from your answers, then, that it was not generally known in the trade that these shows were fixed?

Mr. DAVIS. Known or believed?

Mr. SPRINGER. Either known or believed.

Mr. DAVIS. I would say that it was not known, but it was probably believed by many people.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Davis, you have been testifying at length here in an effort to try to get the facts behind what information you have.

Mr. DAVIS. Yes, sir.

The CHAIRMAN. It is not clear in my mind.

You said that you had known for some time that these shows were being fixed, is that right?

Mr. DAVIS. This one show was the only one I did know about, and the only one I know about now.

The CHAIRMAN. I am talking about the one you are associated with, this particular one.

Mr. DAVIS. Yes, sir.

The CHAIRMAN. You had known for sometime that these shows had or were being fixed?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. Is that from your own knowledge?

Was that the general pattern of this particular show with the contestants that appeared?

Mr. DAVIS. I knew—actually, the only evidence I had was that which Stempel had given me.

The CHAIRMAN. Mr. Stempel gave you the information as to that particular show being fixed and that was the last show that he appeared on?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. That is what is not clear to me.

You said that was the only one you knew about, as far as Mr. Stempel is concerned, and yet you say you had known for some time that they were being fixed.

Mr. DAVIS. There might be a misunderstanding of my words.

I knew that the show had been fixed at one point, and I had certainly no way of knowing whether it had not been since then. I knew if somebody were to say to me a year later, is "Twenty-one" fixed, I would have to say it has been because I knew of one case where it was. No other contestant has ever made this kind of revelation to me.

The CHAIRMAN. Were you here yesterday when Mr. Snodgrass testified?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. Did you hear his testimony?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. Did you observe the kinescope of his appearance?

Mr. DAVIS. Yes, sir.

The CHAIRMAN. Could you say whether or not that was true?

Mr. DAVIS. I would say it certainly seems to be.

The CHAIRMAN. I mean from your own knowledge?

Mr. DAVIS. Oh, no.

The CHAIRMAN. You had nothing to do with it?

Mr. DAVIS. The first I could say about it was when I saw Snodgrass's story in the newspapers.

The CHAIRMAN. You did not know about it prior to that time?

Mr. DAVIS. No, sir.

The CHAIRMAN. That is what I was trying to clear up, whether or not you had any part in this yourself.

Mr. DAVIS. It was a peculiar situation in that Stempel was the only one, and the only way that it could be determined was by a contestant telling about it because the people on the show were quite circumspect, the producers and so forth.

The CHAIRMAN. Thank you very much.

Mr. DAVIS. Thank you, sir.

Mr. LISHMAN. May I have one more question?

The CHAIRMAN. Yes.

Mr. LISHMAN. Mr. Davis, do you know how much NBC paid for the property, including "Twenty-one"?

Mr. DAVIS. I can only say from the newspapers.

Mr. LISHMAN. Was it reported?

The CHAIRMAN. I think we will have information about that later.

Mr. LISHMAN. Was it reported as being approximately \$2 million?

Mr. DAVIS. I have seen it reported from \$2 million to \$4½ million.

The CHAIRMAN. Thank you very much for your appearance here.

The CHAIRMAN. Is Miss Rose Leibbrand here? Will you come around, please?

Will you please be sworn? Do you solemnly swear the testimony you give this committee to be the truth, the whole truth, and nothing but the truth, so help you God?

Miss LEIBBRAND. I do.

The CHAIRMAN. Will you have a seat, please? Will you state your name, please?

TESTIMONY OF ROSE LEIBBRAND

Miss LEIBBRAND. My name is Rose Leibbrand.

The CHAIRMAN. Where do you live?

Miss LEIBBRAND. 2120 Massachusetts Avenue NW., Washington, D.C.

The CHAIRMAN. You are a volunteer witness here this morning, are you not?

Miss LEIBBRAND. Yes, sir.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Miss Leibbrand, were you a contestant on the television quiz show, "Twenty-one"?

Miss LEIBBRAND. Yes, sir.

Mr. LISHMAN. At what time did you appear as such a contestant?

Miss LEIBBRAND. November 1956.

Mr. LISHMAN. How many times did you appear on the program?

Miss LEIBBRAND. Once.

Mr. LISHMAN. Who was your opponent?

Miss LEIBBRAND. Mr. Stempel.

Mr. LISHMAN. Were you given assistance prior to your appearance on this show by Mr. Freedman in the way of furnishing questions and answers?

Miss LEIBBRAND. I was, but I didn't know they were going to use those questions on the air that night I was on.

Mr. LISHMAN. Will you please state how you came to get on this program?

Miss LEIBBRAND. Our public relations counsel for the National Federation of Business and Professional Women's Clubs had arranged this as a publicity activity. At that time I was executive director of the national federation and our president told me to go ahead and to represent the federation on this program. So I was contacted eventually by a note asking me to call Barry & Enright's Productions, and went to New York and took the examination.

Mr. LISHMAN. After you had taken the examination, were you notified to come back?

Miss LEIBBRAND. Yes, sir.

Mr. LISHMAN. Did you go back?

Miss LEIBBRAND. Yes, sir.

Mr. LISHMAN. About what time was that?

Miss LEIBBRAND. That was in November 1956. I don't remember the exact date.

Mr. LISHMAN. November 1956. When you went back to New York at the second meeting, were you given an examination?

Miss LEIBBRAND. The first time I took the examination. The second time I was just briefed, having practice on various questions.

Mr. LISHMAN. When you went back the second time, did Mr. Freedman have a conference with you?

Miss LEIBBRAND. Yes, sir.

Mr. LISHMAN. What took place at that meeting?

Miss LEIBBRAND. We discussed my going on the air, what I should wear, how I should act, and then he had about 100 cards with questions on them, which he would run through and ask me to give him the answers.

Mr. LISHMAN. When you could not give a correct answer, would he give you the correct answer?

Miss LEIBBRAND. We would work it out through the talking around about the question. He told me continuously though, these questions had been used on the air and would not be used again, and that I would get similar questions, but new ones.

Mr. LISHMAN. In other words, his purpose that he stated to you was to familiarize yourself with the procedure that would be followed when you got on the show, when, as, and if you got on the show?

Miss LEIBBRAND. Yes, sir.

Mr. LISHMAN. Did you ever have any meetings with Mr. Enright?

Miss LEIBBRAND. No, sir. I just met as you would meet anyone and that was all.

Mr. LISHMAN. The man you principally saw was Mr. Freedman?

Miss LEIBBRAND. Yes, sir.

Mr. LISHMAN. Did there come a time when you were advised by Mr. Freedman that you were going to go on the show as a contestant?

Miss LEIBBRAND. I was supposed to go the second time, but their time ran out before I got on. I was made up really to go on as a standby. So I came back the third time, and at that time I was on the air.

Mr. LISHMAN. Would November 14, 1956, be that time?

Miss LEIBBRAND. Yes, sir.

Mr. LISHMAN. Did you go on the program November 14, 1956?

Miss LEIBBRAND. Yes, sir.

Mr. LISHMAN. Prior to going on the program, did Mr. Freedman instruct you the number of points you should request?

Miss LEIBBRAND. Yes, sir. He said I was not allowed to bid over 7 or 8.

Mr. LISHMAN. You were not to bid over 7 or 8. Were you also again instructed on how to act while on the program?

Miss LEIBBRAND. Yes, sir. I was supposed to ham it up and supposed to pretend you can't remember the answers and you are supposed to do a lot of thinking.

Mr. LISHMAN. Have you ever met Mr. Stempel, other than on this show?

Miss LEIBBRAND. No, sir.

Mr. LISHMAN. Prior to the show, did Mr. Freedman also give you the questions and answers which were asked you on the show?

Miss LEIBBRAND. Yes, sir, because he came to my dressing room and we ran through some questions and answers again. Again he told me they were questions which had been used, would not be repeated, and that I would have other ones.

Mr. LISHMAN. So when you went on the show, you had no anticipation whatsoever that you were going to be asked questions which had already been gone over by you and Mr. Freedman?

Miss LEIBBRAND. Yes, sir. He also threatened me as I was about to step on the stage. He said, "Remember, Miss Leibbrand, you are not to bid over 7 or 8, or else." I whispered back to him, "I can't win that way." He said, "Just remember you don't bid over 7 or 8, or else." I don't know what the "else" was.

Mr. LISHMAN. What were your feelings about the show when just as you were about to step in front of the television you were given this information?

Miss LEIBBRAND. I was furious at being boxed in, but having been committed to represent the national federation, I could not walk out, because our president had notified 48 State presidents to alert their share of 175,000 members to watch that show.

Mr. LISHMAN. Was it the consensus of opinion among the members of your federation group that this was going to be an honest contest of knowledge?

Miss LEIBBRAND. Absolutely.

Mr. LISHMAN. In fact, what happened when the questions that had been previously given to you were propounded while you were on the program?

Miss LEIBBRAND. I answered them.

Mr. LISHMAN. You answered them with the answers that Mr. Freedman had given to you?

Miss LEIBBRAND. I knew them before he gave them. They were among the hundred he gave me. I knew the answers anyway. They were easy.

Mr. LISHMAN. They were the same questions?

Miss LEIBBRAND. Yes, sir.

Mr. LISHMAN. And the same answers?

Miss LEIBBRAND. Yes, sir.

Mr. LISHMAN. What happened to you?

Miss LEIBBRAND. I won \$130 and went off the air.

Mr. LISHMAN. What is your opinion of this entire incident?

Miss LEIBBRAND. Well, I realize now, I realized when I was in the booth when I was given the questions that the show was fixed. I also realized it was rigged when I was absolutely prohibited, so to speak, from bidding more than 7 or 8. I was a little chagrined and so was our national president, that we were drawn into an organization that had a fixed show.

Mr. LISHMAN. What happened after the conclusion of the contest on November 14? Did you have any conversation with Mr. Freedman or anyone connected with Barry & Enright?

Miss LEIBBRAND. No, sir. They would not even look me in the eye.

Mr. LISHMAN. In other words, you had to leave town without being bidden goodbye?

Miss LEIBBRAND. Yes, sir.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Mr. Mack?

Mr. MACK. I didn't have an opportunity to see this particular show or kinescope. Did you bid less than 7 or 8 points each time?

Miss LEIBBRAND. I bid 7 and I bid 6, just to show my independence.

Mr. MACK. I want to take this opportunity to congratulate you on displaying your independence. Many of us like to be independent, but sometimes we are not in a hurry to display our independence. You were thoroughly satisfied, then, that the show was fixed after your appearance?

Miss LEIBBRAND. Yes, sir.

Mr. MACK. Do you think there was some reason that they didn't let you defeat Herb Stempel at that time? Was that because they thought you might be inherently honest and not make a good contestant on the show in the future, or did you have any idea of why?

Miss LEIBBRAND. It is something that puzzles me. When I was being interviewed in the office, they kept asking me about my ethics in regard to finances. My attitude toward handling money or my attitude toward finances. The question was so subtle that I cannot remember it. I was very much puzzled and I apparently gave all the wrong answers.

Mr. MACK. Did they ask you if you were financially independent, or if you were interested in financial remuneration for your efforts in your work wherever you happened to be?

Miss LEIBBRAND. They were more subtle than that. I don't know what they were getting at.

Mr. MACK. You don't recall the answers you gave them concerning your finances?

Miss LEIBBRAND. I had a feeling they were very much interested in my integrity and my attitude toward finances. Inasmuch as I was

committed to handling a budget of millions of dollars, I apparently didn't satisfy whatever they were driving at. I don't know what they wanted. They spent a long time questioning me from that angle.

Mr. MACK. How long have you been employed at this—is it the Federation of Business and Professional Women?

Miss LEIBBRAND. I had been employed the previous July 1956 at our national convention in Miami Beach, Fla. Previous to that I had been a real estate broker in the State of Missouri for 7 years. I was under bond as an insurance agent.

Mr. MACK. You think they did not have any definite opinion that you were relatively honest in your dealings?

Miss LEIBBRAND. I hope they did.

Mr. MACK. There was one question that was raised in my mind. It might not be pertinent to our investigation but I would like to ask if you reported to the Business and Professional Women that this program was fixed?

Miss LEIBBRAND. Our national president called me at the studio and wondered what happened, why I didn't bid more. I told her I was boxed in and not allowed to bid over 7 or 8. I told her I was surrounded with people, and I could not talk. I told her I would call her when I got back to the hotel. I did not tell her about the questions then.

Mr. MACK. Did you ever tell her about the questions?

Miss LEIBBRAND. Not until after I went before the district attorney in New York.

Mr. MACK. Then the Business and Professional Women made no effort to pass the word along to their membership that the reason that you didn't go all out is because the people—all out on behalf of the organization—that the program director would not permit you to select a higher point?

Miss LEIBBRAND. From the viewpoint of the National Federation that was national publicity for us.

Mr. MACK. I know. But don't they have some ethics themselves, and have a rather high standard? I understand that they are not, theoretically, supposed to become involved in political contests.

Miss LEIBBRAND. Oh, but they do.

Mr. MACK. Yes, I know that. I had the pleasure of running against a woman member of your organization last year, and I assure you they do become interested in politics.

Miss LEIBBRAND. We sponsor qualified women on a nonpartisan basis for office, regardless of party.

Mr. MACK. I thought this was not partisan but all of them supported her.

I was not being facetious. I did understand that your constitution and bylaws prohibit participation in politics, and I suppose they have rather high standards. Seriously, I was just wondering, notwithstanding the fact that they gained nationwide publicity, that they might be interested in informing the membership of this type of program which has been misleading many Americans.

Miss LEIBBRAND. At that time we were reorganizing our national office, and we had so many problems we did not take up that one. However, every member that knows of this resents the idea that this program was fixed. But we did not make a general national program of trying to correct matters. We felt that was out of our jurisdiction.

Mr. MACK. Thank you very much for your testimony.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Miss Leibbrand, I take it from what you have said that the purpose of the program, "Twenty-one," in having you on was the wide publicity which they would receive among the 175,000 women who belong to the business and professional women's clubs; isn't that true?

Miss LEIBBRAND. Yes, sir.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS. Miss Leibbrand, you showed your independence by voting or bidding 6. Did you have any thought of showing it in bidding 10 or 11?

Miss LEIBBRAND. Yes, sir. I thought that out also, but I presumed under the circumstances that they would ask me questions that would be so erudite that I could only answer them by doing research.

Mr. ROGERS. In other words, you understood that the "or else" meant that if you bid too much, they would ask you questions you could not answer?

Miss LEIBBRAND. Yes, sir. I thought that was the inference.

Mr. ROGERS. In other words, they would put you off the show. You understand that as long as you bid 7 or 8, there was not any way in the world you could win with Mr. Stempel?

Miss LEIBBRAND. Yes, sir, because he stopped me in the second round.

Mr. ROGERS. That is all.

The CHAIRMAN. Mr. Moss.

Mr. MOSS. Did you have a feeling, having received the answers, that perhaps your opponent was also given assistance?

Miss LEIBBRAND. I presumed he was, especially when Mr. Freedman left my dressing room, after going through a group of questions, saying, "Now I have to go and practice with the other contestants."

Mr. MOSS. You really had little doubt then?

Miss LEIBBRAND. I beg pardon.

Mr. MOSS. You really had little doubt at that point?

Miss LEIBBRAND. No, sir.

Mr. MOSS. Thank you.

The CHAIRMAN. Mr. Devine.

Mr. DEVINE. No questions.

The CHAIRMAN. Thank you very much, Miss Leibbrand.

Mr. DAVIS, you may be excused. I understand you would like to go.

Mr. Richard Jackman, will you be sworn, please? Do you solemnly swear the testimony you give this committee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. JACKMAN. Yes, sir.

The CHAIRMAN. Will you have a seat? Your name is Richard Jackman?

TESTIMONY OF RICHARD JACKMAN

Mr. JACKMAN. Yes, sir.

The CHAIRMAN. What is your address?

Mr. JACKMAN. 243 West Fourth Street, New York, N.Y.

The CHAIRMAN. New York City?

Mr. JACKMAN. Yes, sir.

The CHAIRMAN. What is your business, Mr. Jackman?

Mr. JACKMAN. I am a labor organizer.

The CHAIRMAN. Were you a contestant on the TV quiz show, "Twenty-one"?

Mr. JACKMAN. Yes, sir.

The CHAIRMAN. When?

Mr. JACKMAN. I don't remember the exact date. It was in the fall of 1956.

Mr. LISHMAN. October 3.

The CHAIRMAN. How many times were you on the show?

Mr. JACKMAN. Just once as a contestant, sir. I came back the following week to bow off, but only once as a contestant.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Jackman, how did you come to appear as a contestant on the TV quiz show, "Twenty-one"?

Mr. JACKMAN. I had been on another quiz show called "Tic-Tac-Dough" which is on during afternoons and is also a Barry & Enright production. After I was defeated on that, they asked me to take the examination, referred to before. I took it. Evidently I passed it so they asked me if I would like to go on it. So I was all in favor of it.

Mr. LISHMAN. Who did you deal with at Barry & Enright?

Mr. JACKMAN. Originally with Mr. Freedman.

Mr. LISHMAN. Did you ever meet Mr. Enright?

Mr. JACKMAN. Not until the "Tic-Tac-Dough" experience. Then I dealt with Mr. Enright, and only Mr. Enright from that time on.

Mr. LISHMAN. After you had been invited to appear as a contestant, did you have a conference with Mr. Freedman?

Mr. JACKMAN. Not to my knowledge. No, I don't believe so.

Mr. LISHMAN. Did you have a conference with Mr. Enright?

Mr. JACKMAN. Yes.

Let me see now. There was a roomful of people that interviewed me after the results of the examination came in; Mr. Enright, Mr. Barry, and a girl. I forget her name.

Mr. LISHMAN. Miss Rader?

Mr. JACKMAN. Yes, Miss Rader. Two or three other people. Mr. Freedman might have been there at that time. They asked me questions about my personal life, and this and that. They told me I had made a good mark on the test.

Mr. LISHMAN. Did you watch a kinescope of the show prior to your appearance?

Mr. JACKMAN. Yes, about that time.

Mr. LISHMAN. Before you went on the show on October 3, 1956, did anyone furnish you with questions and answers that were to be asked?

Mr. JACKMAN. As it turned out, yes. The questions that were asked on the show were all from a group that I had understood were practice questions.

Mr. LISHMAN. Who gave you these practice questions?

Mr. JACKMAN. Mr. Enright.

Mr. LISHMAN. Where did he give them to you?

Mr. JACKMAN. In his office.

Mr. LISHMAN. Did he tell you when he gave you those questions that some of them would appear on the program?

Mr. JACKMAN. Oh, no.

Mr. LISHMAN. Did you read those questions very carefully?

Mr. JACKMAN. They were never read. He had a sheaf of cards and he would mention a category, and I would take a group of points. I would say 7 or 9 or what all. Then he would ask the questions. Then I would answer if I could. If I couldn't, he would tell me what the answer was.

The idea was that I could judge the relative difficulty of an 8 from an 11 or a 3 from a 9. They all seemed to be pretty well in order getting more difficult as they went along.

Mr. LISHMAN. How long did you spend with Mr. Enright going over these cards and receiving the questions and answers?

Mr. JACKMAN. Two or three hours; maybe more.

Mr. LISHMAN. Was that on the day on which you were to appear on the show?

Mr. JACKMAN. No. It was in the week prior to that.

Mr. LISHMAN. On the day that you were to appear on the show, did you have another rehearsal?

Mr. JACKMAN. No, not like that.

Mr. Enright had said—I didn't know exactly when I was going to go on. He appeared very nervous this one time, and said, "You are in a position to destroy my career." I didn't understand that.

I said I certainly didn't want to do that. What exactly did he want.

He said, "Never mind, you will find out."

Mr. LISHMAN. On the day that you were to appear on the show, did you have a meeting with any representative of Barry & Enright?

Mr. JACKMAN. Mr. Enright appeared in my dressing room prior to going on the show.

Mr. LISHMAN. What happened at that time?

Mr. JACKMAN. He said, "This is very serious. Please ask for specific numbers against your opponents. Ask for a 9 and an 8," or something like that. I don't remember the exact ones. A 10 and an 11. Ask for a 6, 7, 8. I can't recall the exact sequence. He said you have to ask for these specific numbers on the question.

Mr. LISHMAN. Up to this point, did you think that was an honest show?

Mr. JACKMAN. Well, I had thought—it was only the fourth show. I had not seen any of the previous ones. I know "Tic-Tac-Dough" had been honest. I had not received any assistance. It seemed to be perfectly up and up.

Mr. LISHMAN. As far as you were concerned, you thought you were entering into an honest contest?

Mr. JACKMAN. Well, except for the atmosphere that something is up; you know.

Mr. LISHMAN. But when you were told the point values to choose, did you begin to feel that maybe this show was not on the up and up?

Mr. JACKMAN. Surely.

Mr. LISHMAN. On that evening that you appeared on October 3, 1956, on the "Twenty-one" show, were you asked and were you given the same questions and answers that you had been previously supplied by Mr. Enright?

Mr. JACKMAN. All of the questions that appeared on the show were included in the group of what had been introduced as test questions.

Mr. LISHMAN. Did you remember them when you were on the show?

Mr. JACKMAN. Yes. I knew them anyway.

Mr. LISHMAN. You gave the answers that had previously been supplied?

Mr. JACKMAN. Yes.

Mr. LISHMAN. They were not difficult questions?

Mr. JACKMAN. Not especially.

Mr. LISHMAN. But up to the time you appeared on the show, until it happened, you didn't know those questions were going to be asked of you, did you?

Mr. JACKMAN. No, sir.

Mr. LISHMAN. Were you told how to act on the show?

Mr. JACKMAN. No. Just be myself as I had been on "Tic-Tac-Dough."

Mr. LISHMAN. I think at this time, Mr. Chairman, we would like to have a kinescopic showing of the October 3, 1956, program on which Mr. Jackman appeared.

The CHAIRMAN. Before the showing of the kinescopic appearance of the witness. I think since it is almost 12 o'clock, the committee will recess until 2 o'clock this afternoon, at which time we may proceed with the kinescopic showing, after which we will have Mr. Art Franklin and Mr. Kletter, and the following witnesses. We will have the representative of the National Broadcasting Co.

The committee will recess until 2 o'clock.

(Thereupon, at 12 o'clock noon, the committee recessed, to resume at 2 p.m., same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will be in order.

Is Mr. Camp in the room, who is here in the interest of Mr. Fisher?

Is Mr. Levine in the room?

(No response.)

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Before showing the kinescope, Mr. Jackman, may I ask whether you remember some of the questions and answers which were furnished you in advance of your appearance on October 3, 1956?

TESTIMONY OF RICHARD JACKMAN—Resumed

Mr. JACKMAN. Yes; there was one about the first world series. Who were the teams involved and when it took place. One about Madam Schumann-Heink, Ernestine Schumann-Heink, the singer. One about Castel Gondolpho, the Pope's summer residence. I think that may have been one of them. Some of them were in the whole group of practice questions. I think that was on the air, though.

Mr. LISHMAN. Before going on the program, these were the questions that were asked you and the answers given to you by Mr. Enright?

Mr. JACKMAN. These were among them. One about the invasion of Ethiopia, I think; something about Haile Selassie.

Mr. LISHMAN. I would now like to ask that we have a kinescopic reproduction of the October 3, 1956, performance of "Twenty-one" in which Mr. Jackman appeared as a contestant.

(Showing of kinescopic reproduction.)

The CHAIRMAN. Mr. Lishman.

MR. LISHMAN. Mr. Chairman, may we have incorporated in the record when completed a transcript of the sound effects we just heard on this kinescopic reproduction of "Twenty-one" quiz show held on October 3, 1956?

The CHAIRMAN. Let it be included in the record.

(Transcript of the sound track follows:)

ANNOUNCER. Geritol, America's No. 1 tonic—Geritol, the fast-acting, high-potency tonic that helps you feel strong fast, presents the exciting quiz program "Twenty-one."

[Music.]

ANNOUNCER. Two players racing to score 21 points, each in a soundproof television studio, not knowing the other one's score, with \$500 riding on each point as they both play "Twenty-one." And here is your host, Jack Barry.

BARRY. Thank you so very much, you're very nice. This is "Twenty-one," the new television game, where two players compete to score 21 points by working in these soundproof studios. They don't know each other's scores, and the winner gets \$500 a point for the difference between their scores. We're going to get things going right now as we meet our first two players.

ANNOUNCER. From Miami, Fla., Miss Phyllis Manson, and returning with \$5,000 from Princeton, N.J., Mrs. Marietta Hodeley.

BARRY. Welcome back to "Twenty-one," Phyllis Manson and Mrs. Hodeley. We're glad to have you both back. How are you tonight?

MANSON AND HODELEY. Fine.

BARRY. All right; good. Well now, ladies and gentlemen, as you all who were watching remember, last week Miss Manson and Mrs. Hodeley played against each other. Mrs. Hodeley had won \$5,000. She decided to risk it by playing against Phyllis Manson and they started playing. They both answered once and they got it right and then they answered once and they got it wrong and they were both back to zero. So we asked them both to come back this week to play a brand new game with Miss Hodeley's \$5,000 at stake. But right before I came out here, Phyllis, Mrs. Hodeley said something to me which I believe she should tell you and our audience. Yes, Mrs. Hodeley?

HODELEY. Uh, I have certain obligations to meet, Mr. Barry—

BARRY. Yes?

HODELEY. (continuing). That I couldn't possibly meet if I lost any part of the \$5,000 that I've already won.

BARRY. I see.

HODELEY. If I lost any part I would never forgive myself, and for that reason I would like to stop now.

BARRY. You'd like to take your \$5,000 and stop now?

HODELEY. Stop now.

BARRY. Would that be agreeable to you, Phyllis?

MANSON. Yes, sir, Mr. Barry.

BARRY. I know we did start playing but we are back at zero. We wouldn't want to do anything—anything in the world to make you be apprehensive about continuing playing. You told us last week how important the money is to you. Would take you 3 years to make this kind of money in your bookshop, so with our blessings there'll be a check from Geritol for \$5,000 waiting for you offstage. Lots and lots of good luck, and thank you for playing "Twenty-one." [Applause.]

HODELEY. Thank you.

BARRY. Well, Phyllis, she took \$5,000 home and now we have to see what you're gonna do. We have to get a player for you, so let's meet our next player.

ANNOUNCER. From Oneonta, N.Y., Mr. Richard Jackman.

BARRY. Welcome to "Twenty-one," Dick Jackman. It's a pleasure to have you here.

JACKMAN. It's a pleasure to be here.

BARRY. You two folks are going to play against each other and in order for Phyllis to know a little bit about you, here are some things that she should know about you Dick.

ANNOUNCER. He attended the University of Buffalo, he spent 2 years in Europe, assigned to the Armed Forces network. In order to become a writer he has supported himself by working on the railroad, in a factory, and as a construction hand.

BARRY. You're really determined to become a writer, aren't you, Dick?

JACKMAN. Well, it's what I should do, you know, I—it's what I do best—I—it's my life—I—

BARRY. It means everything to you?

JACKMAN. Well, more than anything else in the world, actually.

BARRY. Well, Dick, you have wonderful spirit about it and we'll see how you make out here on "Twenty-one." You both are familiar with the rules of the game. The Terry twins will escort you into the studios. Don't forget to put on the earphones and the best of luck to both of you. [Music.]

All right. On we go with "Twenty-one." The players—the players inside can never hear unless I turn their studios on the air with these switches in front of me, and of course they'll never know each other's scores. I'm going to turn Miss Manson's studio on the air. Can you hear me, Phyllis?

MANSON. Yes, I can.

BARRY. Very good, now you know the object is to get to 21 as fast as you can. You do it by answering questions which have a point value from 1 to 11. The first category, astronomy. Now, how much do you know about astronomy? If you know a lot, take a high point question, otherwise take a low point question. How many points, from 1 to 11?

MANSON. Six.

BARRY. For 6 points: Within the constellation Canis Major is a so-called Dog Star, the brightest star in the heavens. What is this star's name?

MANSON. Sirius.

BARRY. Sirius is right. You've got 6 points. Dick Jackman, we're starting on our way to 21. The category is astronomy. How many points do you want, from 1 to 11?

JACKMAN. Excuse me. I'll try 7 points.

BARRY. For 7 points. Because it helps guide mariners across the Seven Seas, Ursa Minor is one of the most beloved of all constellations. What are two more popular names for this constellation?

JACKMAN. Uh, Ursa is a bear and—ah—a little bear, and it's a little bear.

BARRY. That's one.

JACKMAN. The Little Dipper.

BARRY. Right. You have 7 points. Relax.

Miss Manson, you have 6 points. I want to caution you now. If you miss a question we have to deduct points from your score. The category—founders of world religions. How many points do you want?

MANSON. Seven.

BARRY. For 7 points. The religion known as the Church of Jesus Christ of Latter-day Saints has its headquarters in Salt Lake City. What is the other name by which this religious group is known and what is the name of its founder?

MANSON. I believe that's Mormonism.

BARRY. Right; and the name of its founder?

MANSON. John Mormon.

BARRY. I'm sorry. It's Joseph Smith. You don't score. We must deduct 7 points from your score. You only have 6 points. We don't put you below zero, but you are back to zero. Better luck on the next round, Phyllis.

Dick Jackman, you have 7 points. The category—founders of world religions. How many points do you want?

JACKMAN. Uh, 10—10. I'll try 10 points.

BARRY. 10 points. That's a lot of points. Although Hindus cannot trace their origin to any one founder, Orthodox Hindus believe in three divine personalities. Name all three of them.

JACKMAN. Uh, one is the—uh—the caste is after Brahman—

BARRY. That's one.

JACKMAN. Brahman. Oh, ah, I think I know it. It's a Brahman, Vishnu—

BARRY. That's two.

JACKMAN. Vishnu and uh—uh, the bad fellow, Siva. Siva.

BARRY. That's right—and you now have 17 points.

I want to caution both of you not to divulge your scores. This is the one point you know about where at the end of the second round of questions neither of you has reached 21 and now you get an opportunity to stop the game if you want to. If you think you're ahead you may want to stop the game. If either of you stops the game, either one of you, then whoever has the high score at this point will be the winner, at \$500 a point in the difference in your scores. If neither of you want to stop we will continue on to 21 without any more inter-

ruptions. I'm going to give you some time to think it over. If either player stops the game now, Dick Jackman will win \$8,500 but he doesn't know it, because they do not know each other's scores.

If either of you want to stop the game, you must tell me so right now.

You want to stop, Dick? Then you win \$8,500. Congratulations! [Applause.] You heard what happened. This fellow stopped the game. He had 17 points that mattered. You won yourself \$8,500. Relax, will you, fellow? [Laughter.] Now in just a moment—just a moment we're going to find out whether you want to continue playing or not. Gee, Phyllis, I'm awful sorry. I really am, because I know you wanted and needed this money desperately. I wish you could both be winners. We do have a consolation prize for you. We never let anybody go home with less than \$100.

MANSON. That's wonderful.

BARRY. There'll be a check for \$100 waiting for you. Sorry it can't be much more. Good night and thank you for playing.

Calm down. You're trembling a little bit.

JACKMAN. I can't understand it.

BARRY. Now listen, I think you need a breather. Will you stand over here a second. Just relax and we'll get right back to you, Dick, and find out what your decision is. Friends, let's give him a chance to relax for a moment. How about you out there? Did you ever start the day off feeling full of pep and energy and now like Dick Jackman now find out that somewhere along the middle of the afternoon you begin to feel tired and worn out? Well, science explains why you may often feel tired. It's because of iron deficiency anemia. Or, as the Geritol people call it, "tired blood." Now you check with your doctor, and to feel stronger fast you take Geritol—the high potency tonic that begins to strengthen tired blood in just 24 hours. Yes, sree, in just 1 day Geritol iron is in your bloodstream carrying strength and energy to every part of your body. Just two tablespoons of liquid Geritol or two of the Geritol tablets right here contain twice the iron in a pound of calves' liver. It does, indeed. So, if tired blood is your problem, here's how to keep your strength and energy up. Take Geritol every day. Either the good tasting liquid Geritol or the handy Geritol tablets. Believe me, you'll feel stronger faster within 7 days or you get your money back. [Music.]

Dick, now that you've calmed down a little bit, let me ask you a few things. You worked as a railroad worker, a construction worker, a laborer. How come you had so many different jobs?

JACKMAN. Well, I—some of them were seasonal jobs. For instance, I worked in my hometown. That's Oneonta, N.Y., that's the town I—

BARRY. Always trying to make money so you could write.

JACKMAN. Well, I always kept writing no matter where I was. I live in New York now; I don't work like that, too.

BARRY. How many things have you written, about how many stories?

JACKMAN. Well, uh, I've written considerably more—I get dissatisfied with some of them and all of them and tear them up, so I—well, I have 28 now that I—

BARRY. Twenty-eight that you've written. How many have been published?

JACKMAN. None of them.

BARRY. Oh, and you're not discouraged?

JACKMAN. Well, I keep plugging, I guess—

BARRY. Well, I can see you are a plugger and maybe you'll earn enough money here on the program to help you write something really startling so you can really get it published. Now, Dick, you know the rules of the program here. You got \$8,500. You can take that money and quit, or you can continue playing. But, if you decide to go on playing and you lose, whatever you lose will be deducted from your \$8,500. I know what this money means to you, so I want you to think about it carefully. First of all, let's meet our next player.

ANNOUNCER. From Memphis, Tenn., Miss Mildred Scribner.

BARRY. Welcome to "Twenty-one," Miss Scribner. Shake hands with Dick Jackman.

JACKMAN. A pleasure, ma'am.

BARRY. He has just won \$8,500, and in a moment he wants to give us his decision about whether he wants to play against you or not. To help him, let's tell him some things about you.

ANNOUNCER. She is a graduate of the University of Wisconsin. She is a teacher at the Humes High School in Memphis. One of her pupils was Elvis Presley.

BARRY. The audience is enjoying that a little bit. To meet someone in the flesh who actually knows Elvis Presley. Uh, how long have you known Elvis Presley?

SCRIBNER. Oh, I knew him all through his high school.

BARRY. You were one of his teachers?

SCRIBNER. I was one of his teachers, uh-huh.

BARRY. Well, you know, Miss Scribner, some distinguished critics like Jack Gould of the New York Times and Jack O'Brien of the Journal American and others have severely criticized Elvis Presley for some of his performances. What's your reaction to that?

SCRIBNER. Well, I personally don't think that's quite fair, because the—the boy isn't capable of doing anything degrading, and the—I've known him quite a lot personally, and I don't think that in the fact as a teacher that I wouldn't like him if I thought he was doing something degrading.

BARRY. And you did like him?

SCRIBNER. And I did like him.

BARRY. You found him a charming boy, you tell me.

SCRIBNER. Yes.

BARRY. Well, I'm sure the critics had nothing in mind other than constructive criticism and you don't think he does anything degrading in his performance?

SCRIBNER. No. No; I don't think he does. He's a—the—it's not a bit worse than most of the things you see on the air today.

BARRY. I don't think I'm going to try to defend things. As a matter of fact, I have not had the pleasure of seeing Mr. Presley except once on a subdued Steve Allen program, or he was subdued that night, but I'm sure his many fans would be happy to know how you feel about him. Dick, you've heard about Miss Scribner. You've got to \$8,500. You want to take it and quit, or do you want to risk it by playing against her?

JACKMAN. Well, I'll take another stab at it.

BARRY. You want to go on. All right. Good enough. Now both of you take your places in the soundproof studio. Don't forget to put on those earphones, please, and the best of luck to both of you. [Music.]

BARRY. All right, here we go. I'm gonna turn Miss Scribner's studio on the air. Miss Scribner, can you hear me?

SCRIBNER. I can now.

BARRY. Try to get to 21 as fast as you can. Here is the first category. Political leaders. How many points do you want, from 1 to 11?

SCRIBNER. Seven.

BARRY. For 7 points. Washington was the first President of the United States. Who was the second President and to what political party did he belong?

SCRIBNER. John Adams, and he's a Federalist.

BARRY. Right, and you have yourself 7 points. Relax, Miss Scribner. All right, Dick Jackman, you be very careful. You have \$8,500 at stake. The category, political leaders. How many points do you want to try for?

JACKMAN. Oh, uh, 8, I guess.

BARRY. 8 points. Sinclair Weeks, George Humphrey, and James Mitchell all occupy posts in President Eisenhower's Cabinet. What are their posts?

JACKMAN. Uh, let's see, that's Sinclair Weeks in Commerce—

BARRY. Right.

JACKMAN. And Mitchell, is, uh, uh, he followed Dirk—uh, Labor!

BARRY. Right. You have one more, Humphrey.

JACKMAN. Uh, he's Treasury—the Treasury Department.

BARRY. Right, and you have 8 points.

BARRY. Miss Scribner, you have 7 points. The category is "Italy." How many points do you want to try for?

SCRIBNER. Seven.

BARRY. For 7 points. Italy's first attempt at empire building under Mussolini succeeded. Tell us the country annexed in this war and the name of its king.

SCRIBNER. Tell what?

BARRY. Italy's first attempt at building an empire under Mussolini succeeded. Tell us the country annexed in this war and the name of its king.

SCRIBNER. The country annexed by Italy?

BARRY. Yes.

SCRIBNER. Um, well it's along the Adriatic Sea, the—part of Austria—Hungary.

BARRY. I beg your pardon?

SCRIBNER. It was a part of Austria—Hungary that—

BARRY. You'll have to give me the exact name, please, Miss Scribner.

SCRIBNER. Uh, the part of Austria.

BARRY. No, I'm sorry. The country was Ethiopia.

SCRIBNER. Oh, I thought you said Europe. You didn't.

BARRY. No I did not. I'm sorry, and the name of its king was Haile Selassie.

SCRIBNER. Yeah.

BARRY. I'm sorry you didn't score. We have to deduct the 7 points. You're back to zero, but better luck on the next round.

Dick Jackman, you have 8 points, the category is "Italy." How many points do you want to try for?

JACKMAN. Oh, uh, 7 points, I guess.

BARRY. For 7 points. Italy's first attempt at empire building under Mussolini succeeded. Tell us the country annexed in this war and the name of its king.

JACKMAN. Uh, the first conquest, the first thing he tried was, uh—

BARRY. The first attempt, yes.

JACKMAN. That was—uh—Ethiopia.

BARRY. That's right. And the name of its king?

JACKMAN. Of the, uh—is Haile Selassie.

BARRY. Right. You now have 15 points.

I want to caution you—I want to caution both of you now, don't divulge your scores; you can hear each other. This is the only time you can. You have an opportunity now to stop the game if you want to and I suggest you only do that if you think you're ahead. If either of you stops the game, whoever has the high score at this point will be the winner. If neither of you want to stop we will continue on to 21 without any further interruptions. Now I'm going to give you some time to think it over. If either player stops the game now, Dick Jackman will win \$7,500 more, making a grand total of \$16,000. If either of you want to stop the game you must tell me so right now. No? All right then, we'll continue on to 21. Relax, Dick.

You have no points at this moment, Miss Scribner, but let's see how you do. The category, "Inventions." How many points do you want to try for on inventions?

SCRIBNER. About 8.

BARRY. Who invented the passenger elevator? The passenger elevator.

SCRIBNER. Otis.

BARRY. Right, and you have yourself 8 points.

Dick Jackman, you have 15 points. The category is "Inventions." How many points do you want to try for?

JACKMAN. Why, 6—I'll go for 21.

BARRY. You want to try for 21?

JACKMAN. Yeah.

BARRY. If you answer this question correctly you'll have 21 points and you will be the winner. For 6 points, who invented dynamite?

JACKMAN. Uh, the peace prize, uh, uh, Nobel.

BARRY. Nobel is right. You've got 21 points. Congratulations, Dick. You've just won yourself \$6,500 more. Put your earphones back on; you're now winning \$15,000. Congratulations to you. Congratulations. He's winning \$15,000. In a moment we'll find out whether you want to continue.

Gosh, here, Miss Scribner. I hate to get you all the way up here from Memphis, Tenn., to go home with practically no money at all. We never let anybody go home with less than \$100. We hope you've enjoyed your stay here in town and we've been delighted to have you here on our program. You have a check from Geritol for \$100 waiting. Have a pleasant trip back. Thank you very much, Miss Scribner.

SCRIBNER. Thank you. Good night.

BARRY. Dick, I know you have to calm down now. So do I, so what do you say we both listen to my good friend Bob Sheppard. Bob?

SHEPPARD. Well, thank you very much, Jack. Now friends, an important new advance has been made in the relief of common rheumatic and arthritic-like pains due to stiff aching joints. It's Zarumin. Now, if common rheumatic and arthritic-like pains made it difficult to sew, walk or move about, try Zarumin. Zarumin must give you more freedom from these annoying pains or your money back. Now this is a Zarumin pill—and it offers this new advance. It is actually a pill within a pill. And over here is a model of the pill. Now, as you can see, Zarumin contains an outer pill that gives fast temporary relief

and an inner pill that brings more relief hours later. Thus giving longer lasting relief. The result—once again you're able to do the things that pain may have been preventing. Take Zarumin as directed. If pain persists, see your doctor. That's Z-a-r-u-m-i-n, at your drugstore now.

BARRY. Well, Dick, you've had a moment to recuperate. You have \$15,000. You're faced with the decision again whether you want to continue playing or risk it by, by—do you want to take your money or whether you want to risk it and keep playing. So, to give you some information that'll help you decide, let's meet our next player.

ANNOUNCER. From Bronxville, N.Y.—Dr. John Gray.

BARRY. Well, Dr. Gray, backstage you heard the news. This fellow won \$15,000 and now he has to decide whether he wants to play against you or not. Let's give him some information and that'll help him about you.

ANNOUNCER. He was born in Calcutta, India. He attended high school in Shanghai. He teaches Spanish and French at Hunter College. He has a collection of over 40,000 stamps.

BARRY. That's Dr. Gray "in a nutshell," and Dick Jackman, you have \$15,000. Do you want to take that money and quit or would you risk it all by playing again?

JACKMAN. Well, I want to try it again. I want to go on.

BARRY. You want to go on. All right, on we go, fellows. Take your places in the studios and the best of luck to both of you. Carry on. Here we go. On goes Dr. Gray's studio. Can you hear me, Dr. Gray?

GRAY. Yes, I can hear you fine.

BARRY. Here is the first category—"Nicknames and people." How many points do you want to try, from 1 to 11?

GRAY. Well, let's try 7.

BARRY. For 7 points. This Senator from Illinois was known as the "Little Giant." Identify him.

GRAY. He was the man that—uh—worked with—uh—

BARRY. Will you come a little closer that way; that's right.

GRAY. He was the man that fought with Lincoln; Stephen Douglas.

BARRY. Right, you have 7 points. Good for you, sir. All right, Dick Jackman, here we go again. \$15,000 at stake. The category—"Nicknames and people." How many points do you want to try?

JACKMAN. Uh, I'll try 9 on that.

BARRY. Nine points. Who was known as "Mother of all the Doughboys?"

JACKMAN. Uh, uh, she's a great favorite of my mother's, Schumann-Heink.

BARRY. Madame Schumann-Heink. You've got yourself 9 points.

Dr. Gray, you have 7 points. The category, this is very timely, is "Baseball." How many points do you want to try for?

GRAY. Well, let's try for 8; 8 points.

BARRY. Eight points. Here's your question: Although attention in the batting department was centered this year on the American League's Mickey Mantle, the National League had its own batting champion. Who was it who had the highest batting average this year in the National League?

GRAY. Uh, gee, it must be somebody from either the Dodgers or Milwaukee—

BARRY. Could you come a little closer and talk a little louder, Doctor? Thank you.

GRAY. The only man I can think of that's a real good batter is Stan Musial. Probably wrong on that.

BARRY. I'm sorry, you are. It's Henry Aaron of Milwaukee, with a .328. You lose your 8 points and you're back to 0. Better luck on the next round, Dr. Gray.

GRAY. Thank you.

BARRY. Dick Jackman, you have 9 points. The category is "Baseball." How many do you want to try for?

JACKMAN. Uh, I'll—I'll try 10. I guess.

BARRY. You really know your baseball.

JACKMAN. Yeah.

BARRY. Here is your question, for 10 points. Tell us—tell us what year—what year the first world series was played between the National league and the American League, and what two teams played?

JACKMAN. 1903.

BARRY. That's right.

JACKMAN. Modern baseball. It was the Red Sox in the American League, I know.

BARRY. Right.

JACKMAN. I think, uh, uh, Honus Wagner—ah, Pirates, Pittsburgh Pirates.

BARRY. You're right. And you have 19 points.

Now, men, I caution you now, don't divulge your scores, because you can hear each other. We're at the end of the second round. Neither one of you scored 21 and you have a chance to stop the game right now if you want to. I caution you not to do it unless you think you are ahead. If either of you stops the game, whoever has the high score at this point will win. Now I'm going to give you some time to think it over and please do. If either player stops the game now, Dick Jackman will win \$9,500 more, giving him a grand total of \$24,500. If either of you want to stop the game you must tell me so right now.

JACKMAN. I'll stop, I think.

BARRY. Come out here, young man. You've just won yourself \$24,500. Did you hear that, Doctor?

Dr. Gray, our time is running along. I wish we had a lot of money for you but we do have \$100 consolation prize and thanks for playing with us. Thank you very much, Doctor.

Right, \$24,500. I wish I could talk to you all night, but our time is running out. Will you come back next week and meet your next player and tell us whether you're going to continue or not?

JACKMAN. Why, sure, Jack.

BARRY. Boy, it's been a terrific night. Thanks for playing "Twenty-one." Goodnight, Dick Jackman. Oh—he looks so bewildered. I hope that I'm not, because I would like to remind you that if you've been feeling weak and run down because of iron deficiency anemia, or, as we call it, tired blood, you should take Geritol every day, either liquid or tablet. You'll feel stronger fast within 7 days or your money back. And, mothers, will you remember that the Geritol people also make Geritol, Jr. It's just as effective for growing children as regular Geritol is for you. Say, I hope you enjoyed the program tonight. Did those of you in the studio enjoy it? Well, I hope you at home enjoyed it. I hope you will come back next week and see Dick Jackman and say, watch my friend Walter Winchell on his show Friday night. He's going to have a great show. See you next week. Thank you and good night, everybody.

ANNOUNCER. If you often can't sleep—your nerves on edge—try this new sleeping tablet—Sominex, that contains not just one but three medical ingredients all working together like a doctor's prescription to help bring safe, natural like sleep. Taken as directed, Sominex brings 100 percent safe sleep. Helps calm down jittery nerves. Sominex contains no narcotics, nonhabit forming. Get Sominex, take as directed for 100 percent safe sleep.

Geritol, American's No. 1 tonic. Geritol, the fast-acting high-potency tonic—helps you feel stronger fast, has presented "Twenty-one." Geritol also brings you the new "Herb Shriner Show" every Tuesday night over another network. Consult your papers for time and station. And now this is Bob Sheppard wishing you good health from Pharmaceuticals, Inc., who brings you Geritol, Zarumin, and other fine quality drug products.

Mr. LISHMAN. Now, Mr. Jackman, when you appeared on this program, you were told the exact questions that would be asked and the exact answers?

Mr. JACKMAN. Oh, no.

Mr. LISHMAN. So when you went on that program you didn't know exactly what questions were going to be asked you and what answers you were to give?

Mr. JACKMAN. Oh, no.

Mr. LISHMAN. So, therefore, you thought it was an honest show?

Mr. JACKMAN. When I went on. But after—

Mr. LISHMAN. That is just what I am coming to. You just wait. When you went on that show you thought you were engaging in an honest contest of skill; is that correct?

Mr. JACKMAN. Yes, sir.

Mr. LISHMAN. Is it a fact that in the warmup sessions previous to the show, Mr. Enright furnished you with a whole list of questions and

answers, included in which were the actual questions and answers that have just been given on this show?

Mr. JACKMAN. Well it was never done with a list. He just asked me the questions and then I would answer.

Mr. LISHMAN. He furnished you?

Mr. JACKMAN. Yes, with a whole group.

Mr. LISHMAN. With a series of questions and answers?

Mr. JACKMAN. Yes.

Mr. LISHMAN. Which series of questions and answers included the very ones we have just seen on this reproduction; is that correct?

Mr. JACKMAN. Exactly.

Mr. LISHMAN. Were you instructed as to what point values to take on this program?

Mr. JACKMAN. Yes. He came to the dressing room.

Mr. LISHMAN. At what time?

Mr. JACKMAN. Just before the show was to go on the air.

Mr. LISHMAN. What did he tell you?

Mr. JACKMAN. He said that his career was in jeopardy and that I was to take as a personal favors to him these certain number of points on each one, the ones that showed up on there, seven and eight, I think.

Mr. LISHMAN. Did he instruct you when to stop?

Mr. JACKMAN. After each sequence, he said take it and stop, take it and stop, he said.

Mr. LISHMAN. When the questions were asked you on the show which had been previously furnished to you by Mr. Enright, were you surprised while you were on that show?

Mr. JACKMAN. I was surprised at the first one. After that I figured that they would be among the others, too.

Mr. LISHMAN. What was your reaction while you were in that isolation booth, knowing that the fixed questions were coming along?

Mr. JACKMAN. I didn't know what to do. I didn't know whether to walk out of the box or whether to go along with the charade.

Mr. LISHMAN. You were an exceptionally good performer on this show. Were you coached in any of those acting mannerisms?

Mr. JACKMAN. No. The coach would have probably eliminated a good bit of it and saved me some embarrassment.

Mr. LISHMAN. As I understand it, you won \$24,500.

Mr. JACKMAN. Yes.

Mr. LISHMAN. As stated in the showing we have just seen, is that correct?

Mr. JACKMAN. That is right.

Mr. LISHMAN. What happened immediately after the show?

Mr. JACKMAN. Mr. Enright told me to come to his office the following morning. Then I went out to the plaudits of my friends, impressed with my performance.

Of course, that was excruciating for me when I realized there had been fraud involved. So I was just sick about the whole business. I acknowledged their congratulations as well as I could, knowing what I knew. Then I went home to bed.

Mr. LISHMAN. What did you tell Mr. Enright?

Mr. JACKMAN. I saw him the next morning and I told him that I couldn't be a party to the whole business.

Mr. LISHMAN. Do you recall the substance of the language you used in so informing Mr. Enright that you were refusing to go along with a fixed game?

Mr. JACKMAN. I told him—I don't recall the conversation verbatim—I know I said I didn't think it was proper for me to do it. I didn't want to make any abstract condemnation of what he was doing, but it just wasn't correct for me.

Mr. LISHMAN. What did Mr. Enright say?

Mr. JACKMAN. He suggested that I think it over over the weekend and see him again on Monday. In those days the show was on Wednesday evenings rather than Monday.

Mr. LISHMAN. Did you think it over?

Mr. JACKMAN. I flew to Buffalo to talk to my mother who had seen me win the money. That was the hardest part, to tell her that it probably wouldn't be forthcoming, that I was not going to continue with the business.

Mr. LISHMAN. Did you tell your mother that you were going to refuse accepting the \$24,500?

Mr. JACKMAN. Yes.

Mr. LISHMAN. Then what happened?

Mr. JACKMAN. Why, she agreed that was the proper thing to do rather than to go on with the show. So I flew back to New York and I met with Mr. Enright that Monday morning. He said that if I were to continue that the reaction to the show would have been so good that he could guarantee me \$100 a week for the rest of my life with the winnings from the show.

Mr. LISHMAN. Did he make any other attractive offers to you besides that?

Mr. JACKMAN. No. That was attractive enough.

Mr. LISHMAN. Mr. Jackman, you are not a rich man?

Mr. JACKMAN. That is true enough.

Mr. LISHMAN. How badly did you need money?

Mr. JACKMAN. Oh, I didn't need it, I guess. I wanted to have some of—my family was running out of money pretty rapidly and I wanted some for that. I didn't need much myself.

Mr. LISHMAN. How much were you earning at this time?

Mr. JACKMAN. I seldom make over \$30 or \$40 a week, I guess.

Mr. LISHMAN. In your conversation with Mr. Enright, what words substantially, did you use in telling him that you would not take the \$24,500?

Mr. JACKMAN. I told him that it was embarrassing to me, that my family had seen me win the money and it was a bitter disappointment to them, but I had explained it to my mother and I did not feel I could continue with the performance.

Mr. LISHMAN. Did Mr. Enright urge you to take some of the money if you would not take it all?

Mr. JACKMAN. Yes. He gave me a check for \$15,000.

Mr. LISHMAN. \$15,000.

Mr. JACKMAN. Yes.

Mr. LISHMAN. And you accepted it?

Mr. JACKMAN. Yes.

Mr. LISHMAN. I hand you a paper and ask if you can identify this paper.

(The document was handed to the witness.)

Mr. JACKMAN. That looks like it.

Mr. LISHMAN. Will you please describe what that paper is?

Mr. JACKMAN. It says in the upper left-hand corner, "prize money, show of 10-10-56, \$15,000, pay \$15,000 and no hundredths to Richard Jackman, 210 Thompson Street, from Dojo, Inc., Daniel Enright."

Mr. LISHMAN. Why did you take the \$15,000 when you refused to take the \$24,500?

Mr. JACKMAN. Well, I would have taken a subway token to get back downtown at that time, I guess. I wanted to be as far out of the business as I could but I wanted to assuage some of my family's misfortune, I guess, or surprise and disappointment.

Mr. LISHMAN. Did Mr. Enright explain why he would not give you the full amount?

Mr. JACKMAN. I didn't ask for the full amount. He gave me that. He said more would throw the budget out of whack.

Mr. LISHMAN. What happened the next week after this?

Mr. JACKMAN. I agreed to go on and say that I was not going to continue with the game. I made an appearance on the next show and said the pressure was too much and that I would not be continuing. Then they had the regular show.

The following week was when Mr. Stempel first came on.

Mr. LISHMAN. Looking backward on this, do you think you might possibly have been scheduled to be one of the first big money winners on this program?

Mr. JACKMAN. Oh, he told me that I would be on for 4 or 5 weeks anyway. The promise of a hundred dollars for life was on the basis of that, of course.

Mr. LISHMAN. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Mack, do you have any questions?

Mr. MACK. I would like, Mr. Jackman, merely to ask you to clear my mind, you turned down the \$24,500 which you won.

Mr. JACKMAN. What I turned down was the \$100 a week to go on further. I considered that the \$24,500 was for the show's performance.

Mr. MACK. In other words, you were willing to accept the \$24,500?

Mr. JACKMAN. Well, yes.

Mr. MACK. It was not your intention to refuse to accept the full amount of \$24,500 after you had consulted with your family?

Mr. JACKMAN. Well, it depended on whether it had been necessary to go on again to get the \$24,500, I would have refused it. It was proffered. I thought about that at the time. The money would have just gone directly to the Barry & Enright organization.

He said it was not accounted for in the records. Mr. Enright always took special pains to point out that it was only he and I who were dealing with the thing, and the fact that he had paid me less than was won on the show was known only to himself and me.

Mr. MACK. In other words, the viewing public thought you accepted the \$24,500?

Mr. JACKMAN. Yes, sir.

Mr. MACK. You considered this as reimbursement for your participation or, shall we say, acting in the show?

Mr. JACKMAN. I do not consider that I had any moral claim to the money, sir.

Mr. MACK. But you did accept \$15,000?

Mr. JACKMAN. Yes.

Mr. MACK. You accepted that as reimbursement for your participation in the show?

Mr. JACKMAN. I guess that clears it up for my own conscience, yes. That was for the evening's sacrifice.

Mr. MACK. I certainly admire your honesty and wish to take this opportunity to commend you on the forthright statements that you have made concerning the show. You said you had no coaching whatever as to how you should conduct yourself on the show?

Mr. JACKMAN. Only one thing that had been pointed out to me on "Tic-tac-Dough," which was to pause before answering. That is common, I guess. I was shouting them out as soon as I could think of the answers when I was first on "Tic-tac-Dough." That was mentioned once again, that you should pause before answering.

Mr. MACK. Did you have any instructions as to what kind of clothes to wear or your general appearance?

Mr. JACKMAN. No. I was wearing this suit, as a matter of fact.

Mr. MACK. I notice in the kinescope that you appeared to have more hair than you have presently. I did not mean to be saying that you should buy some products that are also advertised on television, but I did notice that your hair seemed to be quite bushy and it seemed to have a definite wave.

Mr. JACKMAN. I think after watching the show, it sort of stands on end a little.

Mr. MACK. You explained it to my satisfaction. Thank you very kindly.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. Mr. Jackman, when did you first appear on "Tic-tac-Dough"?

Mr. JACKMAN. In September, I believe it was. September 1956.

Mr. SPRINGER. How many times were you on that program?

Mr. JACKMAN. Twice.

Mr. SPRINGER. How much money did you earn on that program?

Mr. JACKMAN. \$500.

Mr. SPRINGER. That is the total of both programs?

Mr. JACKMAN. No—yes. It works on the same basis. You win until you are defeated. Then your victor receives a portion of what had been your previous winnings as his due.

Mr. SPRINGER. Whom did you deal with on "Tic-Tac-Dough"?

Mr. JACKMAN. Mr. Freedman.

Mr. SPRINGER. Only with Mr. Freedman?

Mr. JACKMAN. Yes. There was not much dealing, actually, compared to "Twenty-one."

Mr. SPRINGER. On that program were you furnished any questions or answers?

Mr. JACKMAN. None whatsoever. I would not have gone on to "Twenty-one" if I had known.

Mr. SPRINGER. You were entirely on your own on "Tic-Tac-Dough"?

Mr. JACKMAN. Yes, sir.

Mr. SPRINGER. When you came to "Twenty-one" did you deal with Mr. Freedman?

Mr. JACKMAN. No. All of the dealings were with Mr. Enright.

Mr. SPRINGER. Entirely with Mr. Enright on this program?

Mr. JACKMAN. Yes, sir.

Mr. SPRINGER. At any time did you sign a release of any rights that you had against Barry & Enright or the advertising agency? Were you ever asked to sign such a statement?

Mr. JACKMAN. No, sir. There is a formal thing that you sign when you take the examination. It is just a formality. It was not anything particularly like that.

Mr. SPRINGER. Did you sign any statement at any time either while on the program or afterward to the effect that the program was not fixed?

Mr. JACKMAN. Oh, no.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS. Mr. Jackman, do I understand you that when you went and talked to Mr. Freedman about this, or was it Mr. Enright, that he told you that you would not have the same opportunity to stop and take the \$24,500 on the next show?

Mr. JACKMAN. I don't quite understand you, sir.

Mr. ROGERS. As I saw the kinescope, when a person was ahead like you are, the next time they came on the show before the show started, they had an opportunity to stop and take the money right then, or go on with the show.

Mr. JACKMAN. Yes.

Mr. ROGERS. Were you given that opportunity?

Mr. JACKMAN. It was not advanced to me. I insisted upon it. He wanted me to continue for another 4 or 5 weeks.

Mr. ROGERS. As I understood you, you had no objection to taking the \$24,500 you had already won.

Mr. JACKMAN. Yes.

Mr. ROGERS. Why didn't you just go to the show and when it came time, and they say "Do you want to stop?" say "I will stop and take my \$24,500."

Mr. JACKMAN. That would have meant agreeing with them that I was going to go on. I didn't see any necessity of surprising them like that. I think they were surprised enough that I didn't go on.

Mr. ROGERS. I think they have been surprised quite a number of times about this. Did they approach you about taking the \$15,000?

Mr. JACKMAN. No. When I went to see Dan Enright and told him I was not going on any longer, if necessary that I would give up the \$24,500, he said—once again he pleaded with me to continue and then said, "Well, here is \$15,000."

Mr. ROGERS. Why did he do that? Did you tell him you were going to expose him?

Mr. JACKMAN. No. I just said I didn't want to have anything more to do with it.

Mr. ROGERS. I can't understand this budget consciousness he seems to have had, to hand you \$15,000.

Mr. JACKMAN. I don't know. I suppose I could have subsequently brought suit for it after I thought it over.

Mr. ROGERS. You could have brought suit for \$9,500 if you had a lawsuit in the first place in addition to your 15, couldn't you?

Mr. JACKMAN. Yes.

Mr. ROGERS. Did you consider that as a settlement to keep your mouth shut about this?

Mr. JACKMAN. Oh, not at all, no. I just wanted to get as far away from the whole business as possible. I was displeased with it all.

Mr. ROGERS. How long before you told Mr. Enright or Mr. Freedman that you did not want to go on with the show? How long before that did you know that it was a fraudulent or unmoral show?

Mr. JACKMAN. I didn't know until I was in front of the cameras until the questions came down.

Mr. ROGERS. You did not realize it until then?

Mr. JACKMAN. Not completely. As I say, there was an aura pretty well when he appeared in my dressing room and asked me to take these specific numbers. He didn't say what it was going to do, but he still said take these. It was getting more and more obvious that there was some hanky-panky.

Mr. ROGERS. How many times were you on?

Mr. JACKMAN. Just once.

Mr. ROGERS. Just one time. You won that \$24,500 at that time?

Mr. JACKMAN. Yes.

Mr. ROGERS. As soon as you realized what had happened is when you decided not to take the \$24,500 if you had to go on the show to get it.

Mr. JACKMAN. That is right.

Mr. ROGERS. But you did accept the \$15,000 and went on your way?

Mr. JACKMAN. Yes.

Mr. ROGERS. You say there was not any coaching beforehand except as to the points you would take?

Mr. JACKMAN. That is right.

Mr. ROGERS. Did they mess your hair up for you?

Mr. JACKMAN. No, that takes care of itself.

Mr. ROGERS. I noticed you scratched your hair more in that program that you have here. Were you more afraid of those questions than these?

Mr. JACKMAN. Heavens yes.

Mr. ROGERS. More afraid of those questions?

Mr. JACKMAN. Yes. Tis is an honorable business here.

Mr. ROGERS. There is no money at stake here, either, is there? I noticed you said he told you he would give you \$100 for the rest of your life. Did he guarantee how long you would live?

Mr. JACKMAN. No. My family is famous for its longevity, though.

Mr. ROGERS. I think that is all, Mr. Chairman.

The CHAIRMAN. Mr. Lishman, do you have any further questions?

Mr. LISHMAN. One more question, Mr. Chairman.

Mr. JACKMAN, at the time when the newspapers were carrying the story that there was a grand jury investigation, were you approached by any representative of Barry & Enright?

Mr. JACKMAN. Yes. Mr. Freedman called me and said that I would probably be served a summons. First he told me, or he asked me, to come to Mr. Enright's office to speak to him. I complied. Mr. Enright told me that he expected that all of the quiz contestants would be subpoenaed and he asked me what I was going to do. So I told him, you know, I would wait for the subpoena. I would not perjure myself. I would have to tell the story when it came.

Mr. LISHMAN. What did Mr. Enright say to that?

Mr. JACKMAN. He didn't look pleased. He realized that there was nothing he could say.

Mr. LISHMAN. Later on, did Mr. Freedman see you again about this matter?

Mr. JACKMAN. Yes. He came down and asked me what I was going to do again. I just repeated what I told Mr. Enright.

Mr. LISHMAN. Did he try to persuade you not to do that?

Mr. JACKMAN. Oh, no. He expressed disappointment, but he didn't try to threaten me or pressure me or anything like that.

Mr. LISHMAN. Did he say you were going to ruin the career of Mr. Enright?

Mr. JACKMAN. Oh, I think he mentioned that again. I told him that I didn't have any sense of hostility toward Mr. Enright. I didn't want to see him hurt. But I would have to tell the truth under oath. If that hurt him, that is just how it had to be.

Mr. LISHMAN. Mr. Jackman, I think you have been one of the most truthful persons our investigators have encountered in this whole sordid affair, and I want to congratulate you.

Mr. JACKMAN. Thank you very much, sir.

The CHAIRMAN. Mr. Jackman, let me also on behalf of the committee thank you for your appearance here and the testimony you have given on this problem.

Mr. JACKMAN. Thank you, sir.

The CHAIRMAN. Mr. Art Franklin. Will you be sworn, please? Do you solemnly swear that the testimony you give to this committee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FRANKLIN. I do.

TESTIMONY OF ARTHUR FRANKLIN

The CHAIRMAN. What is your full name?

Mr. FRANKLIN. Arthur Franklin.

The CHAIRMAN. What is your address, Mr. Franklin?

Mr. FRANKLIN. 300 West 49th Street, New York City.

The CHAIRMAN. What is your business or profession?

Mr. FRANKLIN. Right now I don't have a profession.

The CHAIRMAN. Do you have a business?

Mr. FRANKLIN. No. I have retired. I have left the public relations business. I have written a play. I am a playwright.

The CHAIRMAN. You are a playwright by profession, then?

Mr. FRANKLIN. That is right.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Franklin, at one time you were employed by Barry & Enright?

Mr. FRANKLIN. Yes, sir.

Mr. LISHMAN. In what capacity?

Mr. FRANKLIN. Public relations counsel.

Mr. LISHMAN. Were you associated with Mr. Davis?

Mr. FRANKLIN. He was associated with me.

Mr. LISHMAN. Are you familiar with the testimony that has been given here by the witness, Stempel?

Mr. FRANKLIN. Yes, sir.

Mr. LISHMAN. That he was given assistance in advance of his appearance?

Mr. FRANKLIN. Yes, sir.

Mr. LISHMAN. Do you have any knowledge that this actually occurred?

Mr. FRANKLIN. Yes, sir.

Mr. LISHMAN. Would you please state the facts that you know concerning this fixing of Mr. Stempel?

Mr. FRANKLIN. Stempel on several occasions in the course of several weeks confided to me that he had been fixed, as you call it, been given the answers in advance, and it turned out to be indisputable.

Mr. LISHMAN. In 1957, as appears from the testimony of Witness Davis, it became evident that Stempel had given his story to two newspapers. Is that correct?

Mr. FRANKLIN. That is correct.

Mr. LISHMAN. When did that first come to your attention?

Mr. FRANKLIN. I received a telephone call from the executive editor of the New York Post, Paul Sand.

Mr. LISHMAN. Can you fix the approximate date of that telephone call?

Mr. FRANKLIN. I could not help you at all on the dates.

Mr. LISHMAN. Would it be in the late summer?

Mr. FRANKLIN. It would be in that area.

Mr. LISHMAN. 1957?

Mr. FRANKLIN. Yes.

Mr. LISHMAN. What did he tell you?

Mr. FRANKLIN. He told me that Herb Stempel had came to him with this fantastic story and he had put five reporters to work on tracking it down and he wanted to let me know he was doing it. I thanked him for alerting me to that. I said, because I had had a long personal relationship with Mr. Sand, I said then before he made up his mind, after he had his five reporters digging up the story, I wanted to have the opportunity to tell the other side, that is all.

Mr. LISHMAN. Did you report this conversation to Mr. Enright?

Mr. FRANKLIN. Yes. One correction to what I said before. Before that I had been alerted by Al Davis who had been alerted by Mr. Enright about the Post making inquiries.

When Paul Sand of the New York Post called it was not exactly a surprise.

Mr. LISHMAN. Did you meet with Mr. Enright and tell him that there was evidence that Stempel had been given assistance on the TV program?

Mr. FRANKLIN. Yes. I think you are referring to the time before Stempel lost to Van Doren. Stempel was in a very nervous state. In fact he had almost broken completely down and was crying. The sum and substance of his disturbance was that he had been forced or was going to be forced, as he put it, dumped on the program.

Mr. LISHMAN. Did Mr. Stempel tell you who was forcing him to be dumped on the program?

Mr. FRANKLIN. Yes. He said Dan Enright had.

Mr. LISHMAN. When you confronted Mr. Enright with these facts, what did Mr. Enright say to you?

Mr. FRANKLIN. It is a little difficult to tell a client and a man you know, almost as a friend for 9½ years, that he was committing some-

thing as dishonest and as insane as that. I tried to convey this in my own way by talking under to him, in a sense. That is, if I were bringing it out across the table, which would ordinarily have been the thing to do, I couldn't. Enright blinked his eyes at me almost as if he were a schizophrenic. Just looked and said there was nothing he could do about it.

I warned him, naturally, as a public relations counsel should in a situation like this, about the disaster that had to follow in the wake of such a terrifying action. As I said before, Enright—I did not know it then. I thought this was a unique situation—I guess Enright had just gone too far in committing the production of the program to this policy.

Mr. LISHMAN. At about the time you were having this conversation with Mr. Enright, did you hear from representatives of NBC that there was a story that might be broken in the newspapers concerning Stempel?

Mr. FRANKLIN. Well, that was always going on because Stempel would stop people in the streets and tell them the sad story.

Mr. LISHMAN. I am asking you if the representatives of NBC took it up with you.

Mr. FRANKLIN. We had a few meetings in which none of this kind of thing was discussed. It was usually something relating to publicity or public relations and it was my function there to get nobody to do anything on account of anything that would happen to rock the situation.

Mr. LISHMAN. Did you receive instructions from Mr. Enright at or about this time to do whatever you could to suppress this story?

Mr. FRANKLIN. I told Dan Enright it was impossible to suppress the story. When Mr. Sand, for instance, called, I did not ask him not to print it. It would have been ridiculous. I would have been confessing that my client was guilty.

Mr. LISHMAN. Did he ask you to take any measures to prevent it?

Mr. FRANKLIN. He asked a lot of things. I only gave him advice on a realistic level. I never lied to Dan Enright. It was not necessary.

Mr. LISHMAN. What did he ask you to do?

Mr. FRANKLIN. He asked me to try to keep it out of the papers. I told him it was impossible. We could only pray.

Mr. LISHMAN. Were you present at a meeting in late summer of 1957 with Mr. Moore and Mr. Syd Eiges and Mr. Enright?

Mr. FRANKLIN. Yes, sir.

Mr. LISHMAN. Was the matter of the Stempel exposé discussed at that meeting?

Mr. FRANKLIN. Yes, sir.

Mr. LISHMAN. Could you state the substance of the discussion at that time in the late summer of 1957?

Mr. FRANKLIN. Yes. A man named Ellis Moore, whom I did not know but I was told was in the capacity of press agent for NBC had received a tip from someone he knew on the Journal-American that the Journal-American was going to do what the New York Post had attempted to do some 6 months before, dig up the story and print the facts.

This meeting was in relation to that. I had been asked to attend. Again, I cautioned everybody not to commit an action. That was my

theory. If nobody did anything, they had a chance of surviving this thing.

Mr. LISHMAN. At that meeting did Mr. Enright deny to anybody that he had given assistance to Mr. Stempel?

Mr. FRANKLIN. It never came up. It was just automatically assumed by everybody there that Herb Stempel was a raving lunatic.

Mr. LISHMAN. Was that assumed by you and Mr. Davis and Mr. Enright?

Mr. FRANKLIN. No. I happened to be very fond of Herb in a kind of relaxed, detached way. I felt very sorry for him.

Mr. LISHMAN. All three of you gentlemen knew that he was being fixed, did you not?

Mr. FRANKLIN. I only knew about it after the situation had gotten out of control. Nobody told me anything until they needed my advice and services.

Perhaps this will explain it better. Al Davis, who worked for me— incidentally, in the best interests of truth, Al Davis was an associate of mine and not a partner and was an account executive functioning for Barry & Enright directly and working for me.

He reported back to me everything that happened. I was in the process of writing a play at that time and I never attended any of the routine meetings. When there was trouble I was called in. There was trouble, so I was participating.

Mr. LISHMAN. At the time of this meeting Mr. Stempel had already told you that he had received the assistance in advance?

Mr. FRANKLIN. Yes. I have to go back a little and give you some of the nuances.

Al Davis, by a coincidence, had gone to the same city college that Herb Stempel was attending at the time. He also lived in the next block in the same community. The two of them had struck up a friendship. From this they had become very personal.

From this, Stempel, who liked to talk a good deal, told Al Davis about the fixing of the program. Al immediately reported that to me, anticipating a problem which, naturally, came up in the next few weeks. But he brought Herb Stempel to me.

When I saw Herb I recognized that he was disturbed. He was in trouble. He had been plucked from obscurity and suddenly when he walked down the street or walked into a restaurant, people were offering him free steaks. It sort of threw him. Everybody asked for his autograph. He was not the same person.

Mr. LISHMAN. At this meeting with Mr. Eiges, Mr. Moore, and Mr. Enright, did you discuss measures by which you could mitigate the impact of the Stempel exposé?

Mr. FRANKLIN. That question seems very vague to me. I really do not quite know what you mean.

Mr. LISHMAN. At that discussion, did you really go into the fact as to whether or not Stempel was telling the truth or not?

Mr. FRANKLIN. As I said before, there was a delicate balance which I always maintained. I talked directly in a kind of vague way.

Mr. LISHMAN. Did the people from NBC give you an answer in the same vague and delicate way?

Mr. FRANKLIN. The people from NBC did not seem to know what was going on but I was used to that. I dealt with them for many, many years before.

Mr. LISHMAN. Was there a discussion there as to what steps should be taken to keep the story from breaking in the newspapers?

Mr. FRANKLIN. No; because NBC was so terrified about the possibility of this all being true that they sort of kept their hands as clean as possible by "kicking it under the carpet."

Mr. LISHMAN. Mr. Davis testified that as a result of that meeting it was decided that everybody would go home and "sit tight and play it by ear," I believe were his words.

Mr. FRANKLIN. It sounded like something I said once.

Mr. LISHMAN. Was that the consensus of that meeting?

Mr. FRANKLIN. Pretty much. That was usually the consensus of every meeting.

Mr. LISHMAN. Was this meeting, Mr. Franklin, with NBC shortly after the time when NBC had purchased the property for a sum in excess of \$2 million, so a breaking of this story would render the property valueless?

Mr. FRANKLIN. Well, no. Again that question is not specific enough for me.

Mr. LISHMAN. I will ask the question more specifically.

Do you know when the property was sold to NBC?

Mr. FRANKLIN. I do not remember the dates; no.

Mr. LISHMAN. Approximately?

Mr. FRANKLIN. I put all of that out of my mind. It is almost impossible to remember. I can remember it in juxtaposition to the events that happened.

Mr. LISHMAN. Was this meeting after the sale?

Mr. FRANKLIN. Which meeting are you referring to? I have lost track.

Mr. LISHMAN. In the late summer of 1957.

Mr. FRANKLIN. I could not tell by the date. I would have to know by the information you want.

Mr. LISHMAN. This is the meeting we have just been discussing and at that time didn't NBC own the show?

Mr. FRANKLIN. I am lost. I must confess I am lost here.

Mr. LISHMAN. Did you have subsequent meetings with representatives of NBC?

Mr. FRANKLIN. After the stories broke there were naturally some meetings with NBC. Up until then there were not any meetings that are worth even talking about here.

Mr. LISHMAN. How about the meeting in 1958 with Mr. Bilby?

Mr. FRANKLIN. Yes; I remember that one.

Mr. LISHMAN. What happened at that meeting?

Mr. FRANKLIN. Well, my job is to protect Barry & Enright. I was trying to get NBC to participate in a joint statement which would give Barry & Enright some kind of stability as far as the newspapers go.

It was very obvious to assume that if NBC didn't come out with some statement defending them, the tide of the newspapers would just swamp them.

Mr. LISHMAN. At that time did you tell them the story was not true?

Mr. FRANKLIN. We never discussed that.

Barry and Enright—no, Barry was not there, but Dan Enright was—Dan Enright defended himself very stoutly. I never said the story was not true because I knew it was.

Mr. LISHMAN. Did Enright say it was not true?

Mr. FRANKLIN. Enright has always said it was not true wherever he went.

Mr. LISHMAN. At that meeting, too?

Mr. FRANKLIN. Yes.

What he said—well, let me put it as clearly as I can remember it. I don't particularly recall the exact discussion. I don't remember whether Ken Bilby or Tom Ervin, the legal counsel, asked Dan Enright directly was it true. All I can remember was Dan Enright denying it being true.

Mr. LISHMAN. Are you familiar with the press statement of August 28, which has been read into the record yesterday?

Mr. FRANKLIN. Which one is that? There were quite a few.

Mr. LISHMAN. That is the press statement wherein NBC stated it had made a thorough investigation and found the charges—I will quote it to you.

Mr. FRANKLIN. Yes; I remember that.

Mr. LISHMAN. You remember?

Mr. FRANKLIN. I remember. That was the essence of the meeting we were just talking about.

Mr. LISHMAN. Had there been any real investigation as to whether the charges were true or untrue?

Mr. FRANKLIN. You probably have more information about that than I do.

Mr. LISHMAN. Do you know?

Mr. FRANKLIN. I don't know of any. I don't know that they did or didn't conduct an investigation. So anything I would say would be just a guess.

Mr. LISHMAN. After this meeting with the NBC people in August 1958, did you have any other meetings with them?

Mr. FRANKLIN. There were continuous meetings.

Mr. LISHMAN. About the same matter?

Mr. FRANKLIN. The situation was twisting and turning every 20 minutes. I was always on call at the time.

Mr. LISHMAN. Did anybody at NBC ever ask you if Stempel's story was true?

Mr. FRANKLIN. No, sir. I had very little contact with NBC directly in those days.

Mr. LISHMAN. Before you appeared before the grand jury, did Mr. Enright have a meeting with you?

Mr. FRANKLIN. Yes, sir.

Mr. LISHMAN. Who else was present besides Mr. Enright?

Mr. FRANKLIN. My lawyer was there, and Al Davis.

Mr. LISHMAN. Who was your lawyer?

Mr. FRANKLIN. A man named Edwin M. Slote.

Mr. LISHMAN. Was it suggested at that meeting that you should not tell the truth before the grand jury?

Mr. FRANKLIN. Yes, sir.

Mr. LISHMAN. Yes?

Mr. FRANKLIN. Yes, sir.

Mr. LISHMAN. Who gave that advice?

Mr. FRANKLIN. Ed Slote.

Mr. LISHMAN. Did Mr. Enright give similar advice?

Mr. FRANKLIN. Enright did not say much then.

Mr. LISHMAN. Were you told that if you would tell the truth that you should leave the country?

Mr. FRANKLIN. I was told that if I told the truth and everybody else lied, I would be convicted of perjury.

Mr. LISHMAN. Were you told that the only alternative to your telling the truth was to leave the country?

Mr. FRANKLIN. Yes, sir.

Mr. LISHMAN. Who told you that?

Mr. FRANKLIN. Ed Slote, very dramatically.

Mr. LISHMAN. Did he tell you where to go?

Mr. FRANKLIN. Not quite like that.

Mr. LISHMAN. Did he suggest that the Cocos Islands had no extradition treaties?

Mr. FRANKLIN. Yes, sir. He knew about a treasure hunt I had become involved in, a combination of shooting a treasure motion picture and treasure hunt in the Cocos Islands and he suggested going over to the islands, which I was not averse at doing.

Mr. LISHMAN. But you did not?

Mr. FRANKLIN. No, I did not. I got very mad. I decided then to tell the truth completely instead of part of it.

Mr. LISHMAN. You appeared before the grand jury and told the truth?

Mr. FRANKLIN. It was not quite that simple.

I did avoid the grand jury summons for a long time. That was not out of loyalty to anyone, but of my own interest. I knew as soon as I appeared before the grand jury I would be cut off the payroll.

Mr. LISHMAN. But eventually you did appear?

Mr. FRANKLIN. Yes, they got me.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Mr. Mack, do you have any questions?

Mr. MACK. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. Mr. Franklin, you were present, as I understand it, at two conversations about newspaper publicity when NBC representatives were present; is that true?

Mr. FRANKLIN. Yes, sir.

Mr. SPRINGER. On both of those occasions was Tom Ervin present?

Mr. FRANKLIN. Yes, sir.

Mr. SPRINGER. As I understand it, he was chief counsel for NBC?

Mr. FRANKLIN. Yes, sir.

Mr. SPRINGER. Did he also represent Barry & Enright?

Mr. FRANKLIN. No, sir. Not to my knowledge. I would be very surprised if it were so.

Mr. SPRINGER. Did Mr. Ervin, acting as general counsel, ask the really penetrating questions with reference to Stempel's testimony as to whether or not there was any truth in what Mr. Stempel had given to the newspapers up to that time?

Mr. FRANKLIN. No, sir. But that was not surprising. That was the first time I ever met Mr. Ervin. I don't think he needs any defense from me. It is not surprising that he did not ask because it was so fantastic. I could not believe it myself.

Mr. SPRINGER. At that time when these two conversations took place did you know that the program had been fixed?

Mr. FRANKLIN. Did I know it?

Mr. SPRINGER. Yes.

Mr. FRANKLIN. Yes, I knew it. I knew that Herb Stempel had been fixed. I did not know about the rest of the program. As a matter of fact, Enright swore to me that Stempel was the only one.

Mr. SPRINGER. But insofar as you know, neither Mr. Ervin nor anybody for NBC made a separate investigation to determine whether or not Stempel was telling the truth?

Mr. FRANKLIN. No, sir.

Mr. SPRINGER. I take it from the tenor of your testimony, when you said that "NBC sort of kicked it under the carpet," that they didn't express any particular anxiety about determining whether or not this was the truth; is that correct?

Mr. FRANKLIN. It would seem so.

Mr. SPRINGER. Did you get that impression from talking to either Mr. Moore or Mr. Ervin?

Mr. FRANKLIN. I never talked to Mr. Moore directly. He was part of a discussion. I hardly remember saying anything to him directly.

Mr. SPRINGER. However, this was the impression you gained overall from what took place in the conferences?

Mr. FRANKLIN. Well, it struck me then as sort of a situation where a husband may suspect a wife, but he loves her too much to ever want to really know, you know. NBC loved Barry & Enright in those days.

Mr. SPRINGER. I think we understand more or less what you mean by that statement.

Do you recall the approximate date when this program was sold to NBC?

Mr. FRANKLIN. I really can't. I don't know the date.

Mr. SPRINGER. Did you continue to work on this program after it was sold to NBC?

Mr. FRANKLIN. Yes, sir.

Mr. SPRINGER. Insofar as you know, as a public relations counsel, no investigation was made by NBC either before or after they purchased the program; is that correct?

Mr. FRANKLIN. To my knowledge.

Mr. SPRINGER. After they had purchased the program, did you work very closely with the public relations counsel for NBC?

Mr. FRANKLIN. No, sir. Al Davis visited them every week. I never went near them.

Mr. SPRINGER. In other words, Davis really handled this, not you?

Mr. FRANKLIN. It was a routine visit in which, I suppose, the physical presence of somebody representing a specific function had to be there. There were always newspaper people present who asked questions. Al had been an account executive functioning between Barry & Enright and myself for so many years that he just continued in that capacity.

I had been making plans to leave the public relations business and this in a sense was grooming Al Davis to take over because when I left the business I gave the rest of it to Mr. Davis.

Mr. SPRINGER. Mr. Franklin, did Mr. Slote, your attorney, advise you privately, or at the conference with the organization on October 3, that it was not a violation of the law, either State or Federal, to fix the program?

Mr. FRANKLIN. He never went that far.

He threatened me, he bullied me. He did a lot of other things. He never went that far.

Mr. SPRINGER. He did not truly inform you as to your legal status or liability with reference to the charges that had been made against this program, did he?

Mr. FRANKLIN. No.

Mr. SPRINGER. Did he ever tell you that if you went before the grand jury and told the truth, there would be no way in which you could be prosecuted for any offense?

Mr. FRANKLIN. No.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Your entire employment was with Barry & Enright?

Mr. FRANKLIN. I don't understand the question.

I work for many people.

The CHAIRMAN. In connection with this matter?

Mr. FRANKLIN. I do not understand the entire employment part. Barry & Enright were just one of my clients. They were an important client. They paid \$35,000 last year.

The CHAIRMAN. None of your other clients had anything to do with "Twenty-one"?

Mr. FRANKLIN. No.

The CHAIRMAN. That is what I am talking about.

Mr. FRANKLIN. I was confused; I am sorry.

The CHAIRMAN. Was NBC a client of yours?

Mr. FRANKLIN. No.

The CHAIRMAN. You did not work for NBC in any way?

Mr. FRANKLIN. No.

I see what you mean now. I had nothing to do with NBC.

The CHAIRMAN. I wanted to get clear in connection with the "Twenty-one" show what your part was.

Mr. FRANKLIN. This is a little new to me.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS. Mr. Franklin, where were you born?

Mr. FRANKLIN. I didn't hear you.

Mr. ROGERS. Where were you born?

Mr. FRANKLIN. I was born in Brooklyn, N.Y.

Mr. ROGERS. Were you born under the name of Franklin?

Mr. FRANKLIN. Is it pertinent to the testimony here? You didn't ask that of Mr. Jackman.

Mr. ROGERS. I will call Mr. Jackman back and ask him.

Mr. FRANKLIN. If you do that, I will tell.

Mr. ROGERS. I think the question ought to be answered.

Mr. FRANKLIN. May I ask why? I don't have any reason not to tell you, but I am just curious.

Mr. ROGERS. If you have no reason not to tell me, why don't you tell me, and then we will discuss that.

Mr. FRANKLIN. I would like to know your reason for asking that question.

Mr. ROGERS. My reason is I want to know whether you are going under the same name now that you were born under.

Mr. FRANKLIN. Is it pertinent to the testimony here?

Mr. ROGERS. That will be determined when we get through with it.

Mr. FRANKLIN. All right. Is it an offense if I don't answer that question?

Mr. ROGERS. Is it a what?

Mr. FRANKLIN. Is it some offense if I do not answer?

Mr. ROGERS. I don't think we can send you to the penitentiary.

Mr. FRANKLIN. That is all I want to know. I prefer to skip it, if it is possible. I don't think it is the business of this committee.

Mr. ROGERS. I am going to insist on the question being answered unless you want to take the 5th amendment.

Mr. FRANKLIN. If you give me no recourse except to, I suppose in order to win the argument I will. But I prefer not to argue.

Mr. ROGERS. I prefer not to argue either. I asked a question and I want an answer.

Mr. FRANKLIN. If you give me the reason for your asking I will be happy to give you the information.

Mr. ROGERS. I don't have to give you any reason at all. I asked the question and I want an answer to it.

Mr. FRANKLIN. Then perhaps I don't have to answer.

Mr. ROGERS. Do you refuse to answer?

Mr. FRANKLIN. I insist on my rights of not answering a question which I feel is not pertinent to the testimony here or my function here.

Mr. ROGERS. Mr. Chairman, I ask that he be required to answer the question. I think it is pertinent. It is a question that can go to the credibility of the witness.

Mr. FRANKLIN. I have not refused to answer any questions here. I have come here very willingly. I think it is an intrusion on my personal and private life.

The CHAIRMAN. In what way, Mr. Rogers, is it pertinent to the questions you are asking?

Mr. ROGERS. If the Chair please, it is pertinent for the purpose of determining whether or not the man has been under any criminal indictments, whether he has operated other businesses under other names.

The CHAIRMAN. I think you can ask him those questions.

Mr. FRANKLIN. I have never committed a crime under any name.

Mr. ROGER. Let me ask you this question. Have you ever had your name changed?

Mr. FRANKLIN. Yes, sir.

Mr. ROGERS. To Franklin?

Mr. FRANKLIN. Yes, sir.

Mr. ROGERS. How many times have you had it changed?

Mr. FRANKLIN. Just once. My brother did that, not I.

Mr. ROGERS. Your brother did that?

Mr. FRANKLIN. That is right, my older brother.

Mr. ROGERS. What was your name prior to that time?

Mr. FRANKLIN. I think it is none of your business.

Mr. ROGERS. I am going to ask the Chair that he be required to answer the question. I think it is pertinent. This man has been giving some testimony actually as a part of a fraud on the American public.

Mr. FRANKLIN. I represent the American public, too. I am aware of it.

Mr. ROGERS. I think it is important to know who is doing the testifying and where they come from.

Mr. FRANKLIN. It is also important to know who is asking the questions.

The CHAIRMAN. The Chair will make this decision.

Mr. FRANKLIN. I am sorry.

The CHAIRMAN. The Chair again inquires, Mr. Rogers, as to the pertinency of the question for any additional possible questions you might have.

Mr. ROGERS. I have told the Chair previously what it was. I also think that he ought to answer the question for the purpose of a complete identification of the witness. I don't think you can completely identify a witness unless you know who he is and where he came from. He has given some testimony here that is of interest to this entire country. I think we certainly are entitled to know who he is and where he came from.

Mr. FRANKLIN. I have told you where I come from.

Mr. ROGERS. We cannot tell that until we find out what his name is and where he came from.

The CHAIRMAN. Mr. Franklin, you testified you were born in New York City.

Mr. FRANKLIN. That is right.

The CHAIRMAN. And you were reared in New York City.

Mr. FRANKLIN. That is right.

The CHAIRMAN. And you had a previous name.

Mr. FRANKLIN. That is right.

The CHAIRMAN. Which was changed.

Mr. FRANKLIN. Yes.

The CHAIRMAN. By court order.

Mr. FRANKLIN. That is right.

The CHAIRMAN. And changed to the name of Franklin.

Mr. FRANKLIN. That is right.

The CHAIRMAN. And you have lived all of your life in New York?

Mr. FRANKLIN. That is right.

The CHAIRMAN. Then you have what you feel are substantial reasons yourself in not identifying your previous name?

Mr. FRANKLIN. My only reason is this. I don't think he has any business asking me that question. That is the only reason I have. It is purely technical or emotional.

The CHAIRMAN. You have reasons of your own that you would prefer not to identify?

Mr. FRANKLIN. Absolutely.

The CHAIRMAN. I think under the circumstances, Mr. Rogers, it is a matter of the man's own rights. The court itself—of course, the record itself is very clear wherever it was. Where was this where you had your name changed?

Mr. FRANKLIN. In New York City.

The CHAIRMAN. That was on the records in New York City.

Mr. FRANKLIN. That is right.

The CHAIRMAN. That would, of course, be available in case the gentleman pursued the matter.

Mr. ROGERS. I won't pursue it further if the Chair is going to hold that this man can refuse to answer the question without pleading the fifth amendment. That is the very point. If he wants to take the

fifth amendment, he has the right to take it, but until he takes it, I think he ought to answer all the questions that are pertinent.

The CHAIRMAN. Yes. If the gentleman from Texas would advise the Chair what is the pertinency of the question which we have under consideration here, then the Chair will rule on that.

Mr. ROGERS. The gentleman from Texas has stated to the Chair that it is pertinent for the purpose of completely identifying the witness.

The CHAIRMAN. The Chair feels that the witness has been identified.

Mr. ROGERS. Let me ask the witness this question, then.

Mr. Franklin, when was your name changed?

Mr. FRANKLIN. Some years ago.

Mr. ROGERS. What year?

Mr. FRANKLIN. I forget exactly. Some years ago, say, several.

Mr. ROGERS. Was it changed in New York City?

Mr. FRANKLIN. That is right.

Mr. ROGERS. In what court.

Mr. FRANKLIN. I don't remember. Lawyers take care of those things. It was purely technical. I had been using the name of Franklin all my life.

Mr. ROGERS. Mr. Chairman, I think the witness is proving the pertinency of the testimony. He knows certainly when it was done. There is not any way in the world to check the records on this thing unless this man gives us the information.

Mr. FRANKLIN. I think you might be wrong. I don't know exactly when we had a conference at which time during all of those situations which came up were there.

Mr. ROGERS. What county was it in?

Mr. FRANKLIN. I don't know. If this is so——

Mr. ROGERS. How old are you now?

Mr. FRANKLIN. I am 42 years old.

Mr. ROGERS. How long ago was it that your name was changed?

Mr. FRANKLIN. About 5 or 6 years ago.

Mr. ROGERS. About 5 or 6 years ago?

Mr. FRANKLIN. That is right.

Mr. ROGERS. And you can't remember that?

Mr. FRANKLIN. I just remembered it for you, didn't I?

Mr. ROGERS. You said your brother had your name changed.

Mr. FRANKLIN. He had his name changed. He had his name changed a long time before that, at which point I had begun using the name of Franklin. Is this clear to you now, Mr. Rogers?

Mr. ROGERS. No, it sure isn't.

Mr. FRANKLIN. Let me explain it to you.

Mr. ROGERS. All right.

Mr. FRANKLIN. We are taking some valuable time.

Mr. ROGERS. It is not too valuable to get the facts.

Mr. FRANKLIN. These are the facts, Mr. Rogers. When I was a very young lad my brother, who is quite some years older than I, changed the name to Franklin, which incidentally is very close to the original name.

Mr. ROGERS. Your older brother changed his name to Franklin?

Mr. FRANKLIN. That is right. The name that I have now. Is that clear now, Mr. Rogers?

Mr. ROGERS. Some years ago your brother did that. I am not worried about your brother. I am worried about you, Mr. Franklin.

Mr. FRANKLIN. You wanted the facts, didn't you?

Mr. ROGERS. Yes.

Mr. FRANKLIN. I am telling you the facts.

Mr. ROGERS. All right. Go ahead.

Mr. FRANKLIN. He changed his name legally. I began using the name Franklin which is many years ago.

Mr. ROGERS. How many years ago?

Mr. FRANKLIN. Oh, 20 years ago, more.

Mr. ROGERS. Twenty years ago?

Mr. FRANKLIN. Something like that.

Mr. ROGERS. You started using the name Franklin?

Mr. FRANKLIN. Yes. Maybe more than that, maybe 25.

Mr. ROGERS. That was not your real name.

Mr. FRANKLIN. I used it as a writer. It was a pen name. I was a writer.

Mr. ROGERS. Did you ever use your real name at that time for any purpose?

Mr. FRANKLIN. There was no purpose to use it. I was a writer.

Mr. ROGERS. Did you or didn't you?

Mr. FRANKLIN. I said there was no purpose to use it; therefore I didn't.

Mr. ROGERS. You didn't?

Mr. FRANKLIN. To all purposes I was using the name of Franklin. Five or six years ago, I don't remember exactly which, it might have been 7 or 8, or it might have been 4 or 5, I changed it legally. That is the story of my name.

Mr. ROGERS. You said four or five, you changed it legally?

Mr. FRANKLIN. That is right.

Mr. ROGERS. You mean to tell this committee that you can't remember the county in which you had that changed, or the court?

Mr. FRANKLIN. I could take a guess, but I might be wrong and you might make a Federal case out of it.

Mr. ROGERS. If a Federal case is in order, one will be made out of it, if I have anything to do with it.

Mr. FRANKLIN. Yes. I will come back later. I would like to talk to you again.

Mr. ROGERS. Let us go on. You remember all this that you have talked about back in 1957 but you can't remember anything before that? Is that your testimony?

Mr. FRANKLIN. Let me correct you, Mr. Rogers. I just told this committee that I could not remember back in 1958.

Mr. ROGERS. That you what?

Mr. FRANKLIN. That I could not remember dates. I told the committee here I could not remember dates.

Mr. ROGERS. I am not talking about dates. I am talking about the county in which you lived. Do you remember that?

Mr. FRANKLIN. It wouldn't surprise me at all. I thought it was Kings County. It would not surprise me at all if it was not.

Mr. ROGERS. Mr. Chairman, let us ask the witness to answer "Yes" or "No" to these questions.

Mr. FRANKLIN. I am answering in my way. I am trying to answer you in the way you are asking me the questions.

Mr. ROGERS. Mr. Chairman, I am going to object to the witness doing this, and I am going to insist that we have——

Mr. FRANKLIN. Mr. Chairman——

The CHAIRMAN. Just a minute——

Mr. ROGERS. Questions answered directly, rather than evasive answers.

The CHAIRMAN. Mr. Rogers, the Chair feels pursuing the course about the man's court record and the background with the information he has already given certainly does not lead to the pertinency of this investigation here. He has properly identified himself, both to his present name and the court proceedings which authorized it. I just hope the gentleman will proceed with his questioning on the pertinency of the investigation itself.

Mr. ROGERS. If the Chair please, I am going to the credibility of this witness. I think it is fairly important in these hearings. He has testified that 5 or 6 years ago, he can't even remember the county in which he lived, and yet he has testified to actual facts that took place 2 or 3 years ago.

The CHAIRMAN. I think the witness testified to the fact that he was not sure what county the court was in.

Mr. ROGERS. I will ask him again. What county were you living in then?

Mr. FRANKLIN. I think it was Kings County.

Mr. ROGERS. You think it was Kings County?

Mr. FRANKLIN. That is right.

Mr. ROGERS. Did you go to the courthouse?

Mr. FRANKLIN. No, I didn't. It was done by a lawyer.

Mr. ROGERS. Who was your lawyer?

Mr. FRANKLIN. My lawyer was the same gentleman I talked about, Edwin M. Slote.

Mr. ROGERS. He is the man that told you to leave the country?

Mr. FRANKLIN. Yes.

Mr. ROGERS. He is the same man that got your name changed for you?

Mr. FRANKLIN. That is right. He was my lawyer.

Mr. ROGERS. How long has he represented you?

Mr. FRANKLIN. About 6 or 7 years, something like that.

Mr. ROGERS. He is still practicing law in New York?

Mr. FRANKLIN. I am assuming that. I don't know.

Mr. ROGERS. How long since he has represented you?

Mr. FRANKLIN. Since my appearance before the grand jury in New York City.

Mr. ROGERS. Since your appearance before the grand jury in New York City?

Mr. FRANKLIN. Did you ask me how long he has not?

Mr. ROGERS. How long has he represented you?

Mr. FRANKLIN. Up until my appearance before the grand jury. He represented me legally. That was about 6 or 7 years.

Mr. ROGERS. About 6 or 7 years ago?

Mr. FRANKLIN. I don't think you understand me.

Mr. ROGERS. No, I sure don't, because you remember one thing 6 or 7 years ago and you can't remember anything else.

Mr. FRANKLIN. That is your interpretation.

Mr. ROGERS. When did he stop representing you?

Mr. FRANKLIN. Would you repeat the question, please?

Mr. ROGERS. When did he stop representing you?

Mr. FRANKLIN. I answered that question originally.

Mr. ROGERS. When did he?

Mr. FRANKLIN. I said since my appearance before the grand jury in New York City.

Mr. ROGERS. When was that?

Mr. FRANKLIN. Several months ago. I don't know.

Mr. ROGERS. Several months ago.

Mr. FRANKLIN. You have the records. You have read those records. You know exactly much better than I do.

Mr. ROGERS. Mr. Chairman, the witness is undertaking to talk around in a circle about these things.

Mr. FRANKLIN. Mr. Chairman, may I object to the manner in which I am being questioned?

The CHAIRMAN. Do you remember when you testified before the grand jury?

Mr. FRANKLIN. No; I don't remember the date.

The CHAIRMAN. It was within the last few months?

Mr. FRANKLIN. Something like that.

The CHAIRMAN. It was following that that he ceased representing you?

Mr. FRANKLIN. Yes. Obviously since I named him before the grand jury, as I did here, there was no longer any representation.

The CHAIRMAN. All right.

Mr. ROGERS. Was it in 1959 or 1958 that you testified before the grand jury?

Mr. FRANKLIN. I think it was this year, 1959.

Mr. ROGERS. This year, in 1959?

Mr. FRANKLIN. I think so.

Mr. ROGERS. Was that the only time you testified before the grand jury?

Mr. FRANKLIN. That is the only time.

Mr. ROGERS. You had meetings, you said, with NBC?

Mr. FRANKLIN. Yes, sir.

Mr. ROGERS. At the time you had those meetings with NBC, were you working for NBC?

Mr. FRANKLIN. No, sir.

Mr. ROGERS. Who were you working for?

Mr. FRANKLIN. Barry & Enright.

Mr. ROGERS. Barry & Enright. Barry & Enright sold this business to NBC; didn't they?

Mr. FRANKLIN. Yes, sir.

Mr. ROGERS. Did you work for NBC after NBC bought the thing?

Mr. FRANKLIN. Yes. Our checks cleared from NBC then.

Mr. ROGERS. What is that?

Mr. FRANKLIN. Yes; the checks came from NBC.

Mr. ROGERS. The checks came from NBC. So you knew you were working for NBC; didn't you?

Mr. FRANKLIN. Actually it was a—as far as I was concerned, I was still working for Barry & Enright.

Mr. ROGERS. I am not talking about as far as you were concerned now. I think we ought to get a little of the legal side of this thing.

Mr. FRANKLIN. I think I might be a little more difficult here than I should be. Maybe I can clarify it.

Mr. ROGERS. Did you discuss a price with NBC for this show?

Mr. FRANKLIN. No, sir. That is why I say technically I was still working for Barry & Enright.

Mr. ROGERS. Were you getting \$35,000 a year?

Mr. FRANKLIN. No, \$25,000 a year plus bonuses.

Mr. ROGERS. You said a minute ago you were getting \$35,000 a year from NBC.

Mr. FRANKLIN. No, I did not. I did not say that, Mr. Rogers. You did not hear me correctly.

Mr. ROGERS. You said a moment ago that NBC was one of your biggest clients, didn't you?

Mr. FRANKLIN. No, I didn't say that. I didn't say that.

Mr. ROGERS. You said Barry & Enright?

Mr. FRANKLIN. I said Barry & Enright.

Mr. ROGERS. But the checks came from NBC after what time?

Mr. FRANKLIN. After the announcement about taking over control of the Barry & Enright programs.

Mr. ROGERS. After the announcement that they had taken over Barry & Enright, did you know they had sold to NBC?

Mr. FRANKLIN. Certainly I did.

Mr. ROGERS. Was that before or after you were dodging this subpoena?

Mr. FRANKLIN. That was a long time before that.

Mr. ROGERS. A long time before it. How did you dodge the subpoena?

Mr. FRANKLIN. I just was not where they expected me to be.

Mr. ROGERS. Did you leave New York?

Mr. FRANKLIN. I started drinking in different saloons.

Mr. ROGERS. You started what? What did you say?

Mr. FRANKLIN. I didn't come to the offices much.

Mr. ROGERS. I know. What did you say in answer to the question?

Mr. FRANKLIN. I was being facetious, because you have provoked me enough for me to feel that way.

Mr. ROGERS. Mr. Chairman, I am going to ask the reporter to read that if he has it in his notes, because this is not a facetious hearing and I think we ought to get the facts.

Mr. FRANKLIN. I would still like to raise an objection to the kind of questioning that I am receiving.

The CHAIRMAN. Read the reply back.

(Record read by the reporter.)

Mr. ROGERS. Mr. Franklin, let me ask you this: How long did you get your checks from NBC?

Mr. FRANKLIN. Up until my appearance before the grand jury in New York.

Mr. ROGERS. Up until your appearance before the grand jury in New York?

Mr. FRANKLIN. Yes.

Mr. ROGERS. And the shows were going on all the time?

Mr. FRANKLIN. Yes, sir.

Mr. ROGERS. Had any of these fraudulent practices that you have testified about taken place after you started receiving checks from NBC?

Mr. FRANKLIN. As far as I know, they were either going on or not going on all along. I had no information.

Mr. ROGERS. There never was any change in the general format of the program?

Mr. FRANKLIN. Oh, no. I didn't say anything like that at all. I don't know anything about it.

Mr. ROGERS. You said as far as you know. I am trying to help you.

Mr. FRANKLIN. I don't know anything about the program. I never watch it, except for the opening program, and the one in which Stempel—I tried to tell you that, but you went off on the wrong tangent. I never watched the program. I had contempt for quiz programs.

Mr. ROGERS. You had contempt for them?

Mr. FRANKLIN. That is right.

Mr. ROGERS. Did you have contempt for the products they advertised, too?

Mr. FRANKLIN. I don't think that is pertinent to the testimony.

Mr. ROGERS. Did you or not?

You were getting money from advertising people and selling the American public.

Mr. FRANKLIN. Are you referring to the sponsor of the program?

I never tasted the product.

Mr. ROGERS. You never tasted the product? You do not have to testify about that.

Mr. FRANKLIN. I never watched the program or tasted the product.

Mr. ROGERS. When was it that the NBC checks started coming?

Mr. FRANKLIN. When they had announced the fact that they were taking over the control of the program.

Mr. ROGERS. How long was that before you went before the grand jury?

Mr. FRANKLIN. A month. Some months.

Mr. ROGERS. Several months?

Mr. FRANKLIN. Several months is pretty good.

Mr. ROGERS. But as soon as you went before the grand jury, those checks stopped?

Mr. FRANKLIN. Yes, sir.

Mr. ROGERS. Have you represented NBC since that time?

Mr. FRANKLIN. That is why I said I felt I never represented NBC on account of the checks had to be stopped. Naturally, the order had to be given by Barry & Enright. You can figure it out for yourself, Mr. Rogers.

Mr. ROGERS. I will figure it out for myself.

You have not worked for NBC or Barry & Enright since you went to the grand jury?

Mr. FRANKLIN. That is right.

Mr. ROGERS. That is all.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Franklin, I think probably in view of this question it should be cleared up.

You answered a question for me a moment ago in which you said that NBC was not now and never had been one of your clients.

Mr. FRANKLIN. That is right. As far as I am concerned, it is almost so except for the technicality of their taking over control. Actually, it was just Barry & Enright who were pushed out of the picture. But I think their own production crews continued to func-

tion under NBC directly rather than reporting to Barry or Enright. I assume this because I went along with the situation. Nothing ever changes as far as our own participation went. We received our check every week, except this time we got it through NBC, so to speak. Actually, nothing changed.

The CHAIRMAN. But you considered yourself as representing Barry & Enright all along?

Mr. FRANKLIN. That is right. All along. All along until the day they were cut off—until we were cut off the payroll, I always considered myself so.

The CHAIRMAN. Mr. Flynt.

Mr. FLYNT. Along that same line, did you consider yourself to be employed by the company that mailed you your periodical check?

Mr. FRANKLIN. As I say, I don't think anything changed. I don't think we received an NBC check. I think we still received the check from the production's company or the production's services.

Mr. Davis would be a better man to ask that question of because he handled the checks. I don't think I ever looked at a check.

Mr. FLYNT. When did NBC buy "Twenty-one"?

Mr. FRANKLIN. Again, I am a little hazy on the dates.

Mr. FLYNT. Give it to us as nearly as you can.

Mr. FRANKLIN. I would say about a year and a half ago or thereabouts.

Mr. FLYNT. I didn't understand you.

A year and a half ago or a year and a half before the show went off the air?

Mr. FRANKLIN. No, no; not that long. I would say about several months before it went off the air.

Mr. FLYNT. By that, 7 or 8 months?

Mr. FRANKLIN. Perhaps.

I am the wrong man to ask that question. I can't give you an honest answer; I don't know.

Mr. FLYNT. You were public relations agent or public relations counsel for a program called "Twenty-one"?

Mr. FRANKLIN. Yes, sir.

Mr. FLYNT. And for the corporation under its corporate name which owned it?

Mr. FRANKLIN. Yes, sir.

Mr. FLYNT. After NBC bought it, you knew that NBC had bought it?

Mr. FRANKLIN. Yes, sir.

Mr. FLYNT. Did anybody from National Broadcasting Co., or any of its affiliates ever ask you if this was a bona fide program or fraud?

Mr. FRANKLIN. No, sir.

Mr. FLYNT. I have no further questions.

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. Just one question, Mr. Franklin.

To use your own words, I think you said you had a vague detached affection for Herb Stempel.

Mr. FRANKLIN. Yes, sir.

Mr. DEVINE. Did you believe him when he told you that the fix was on?

Mr. FRANKLIN. Yes, sir; I did.

Mr. DEVINE. Did you have any reason to doubt him?

Mr. FRANKLIN. Oh, I had lots of reason to doubt him, but not that statement.

Mr. DEVINE. Are you convinced as of today while you are sitting here that he was telling you the truth?

Mr. FRANKLIN. Yes, sir.

Mr. DEVINE. Thank you.

The CHAIRMAN. Mr. Moss.

Mr. MOSS. Mr. Franklin, did you at any time have any agreement with NBC?

Mr. FRANKLIN. No, sir.

Mr. MOSS. You had an agreement with Barry & Enright, your corporate name, whatever it was?

Mr. FRANKLIN. That is right.

Mr. MOSS. Did NBC acquire just "Twenty-one" or did they acquire Barry & Enright Productions?

Mr. FRANKLIN. I think it was a sale of several programs. I don't know which they included at the time.

You must understand that although I functioned for Barry & Enright on a very personal level over a period of many years, that when it came down to the essentials of business, for instance, the client rarely tells you the truth. When it comes down to the dollars and cents.

For instance, may I clarify that?

Mr. MOSS. Yes.

Mr. FRANKLIN. For instance, we were told then in the release of the publicity that the sale was for the sum of \$4 million. Subsequently it has been proved that it was not for \$4 million. But we were asked to release that figure. I don't know what the exact figure is.

So I would have to guess about details like that. That is the thing I was trying to explain to Mr. Rogers, that I was not an inside member of the situation; not on a business level.

Mr. MOSS. You continued then to regard yourself as in no way having any change of status in connection with your client?

Mr. FRANKLIN. That is right.

I had been doing business with them for many years before they ever committed such a ridiculous action.

Mr. MOSS. You indicated that you had conferences with Mr. Slote and Mr. Enright?

Mr. FRANKLIN. That is right.

Mr. MOSS. When your possible appearance either at the district attorney's office or before a grand jury was discussed?

Mr. FRANKLIN. Yes, sir.

Mr. MOSS. You were advised to do one of two things: either not to tell the truth or to leave the country?

Mr. FRANKLIN. That is right.

Mr. MOSS. Were any inducements offered to you if you agreed to leave the country?

Mr. FRANKLIN. No. That never became a part of the problem.

Mr. MOSS. In the course of the threatening and the haranguing that you have described, there were no inducements offered to you?

Mr. FRANKLIN. No, sir.

Let me try to explain.

As I said before, I had known Jack Barry and Dan Enright for many years. They had always been very decent people up until this situation with the "Twenty-one" show. They always behaved in a

very open and aboveboard manner. Dan Enright was one of the nicest people I ever met before he got greedy enough to enter into such an unholy alliance.

Jack Barry was a lot simpler. I knew Jack very well.

I would describe Jack as a kindergarten egomaniac. He suffers the same as most people do who like to appear on television and be recognized on the streets.

Dan Enright was a different kind of man. I considered Dan as a superior person in those days. He was extremely well educated and conversant with many things we liked to discuss. I thought it was a shame he had gone so far.

Mr. Moss. What specifically does this have to do with the conference?

Mr. FRANKLIN. I wanted to explain, while I might have been shocked at the action, I continued to function for these people, just as if, for instance, you find a lifelong friend who has gotten in trouble. You don't run away. You take him a little more seriously than the situation calls for.

Mr. Moss. No inducements were offered to you to leave the country?

Mr. FRANKLIN. No.

Mr. Moss. Were you told that if you appeared you would immediately be dropped from your role as public relations representative of the Barry & Enright operation?

Mr. FRANKLIN. Nobody said that and nobody had to. It was pretty obvious to me. I had been around a little bit.

Mr. Moss. What manner of threats were used, then?

Mr. FRANKLIN. There was a pretty serious threat involved in telling me if I were to go in and tell the truth I would be convicted of perjury because everybody else would lie. I considered that pretty serious.

Mr. Moss. Was that the only threat?

Mr. FRANKLIN. That is enough.

Mr. Moss. You said threats.

Mr. FRANKLIN. Yes. It was in the nature of threats. They were all pertinent to that.

Mr. Moss. In the meetings with NBC, you testified, I believe, that they did not directly inquire as to whether the charges made by Mr. Stempel were true or false.

Mr. FRANKLIN. I wouldn't be in a position to know. I could only tell you—

Mr. Moss. I am only asking you of those meetings where you were actually present. I am not interested in anything that might be hearsay. I am interested only in your own personal knowledge from the meetings you attended.

Mr. FRANKLIN. In the meetings that I attended they never asked that question of me.

Mr. Moss. Was there then only a concern with overcoming unfavorable publicity?

Mr. FRANKLIN. That is right.

Mr. Moss. Or perhaps impeaching to a degree the statements of Mr. Stempel?

Mr. FRANKLIN. That is right.

Mr. MOSS. Did they discuss means of dealing with Mr. Stempel to perhaps sell him as an unstable or unreliable person?

Mr. FRANKLIN. Well, nobody had to go that far because as the New York Post determined quite on its own, they considered Herb Stempel's strange testimony true enough except that he was much too unstable for them to go ahead and publish it. Their own lawyers kept them from publishing it.

Mr. MOSS. They wanted some corroboration; is that it?

Mr. FRANKLIN. Yes. From another source.

Mr. MOSS. Did they ever ask you if the charges were true, to your knowledge?

Mr. FRANKLIN. No. Mr. Sand did not ask me that question any more than I would have asked him not to publish the story. We were friends. I wouldn't have insulted his intelligence nor would he have asked me that question.

Mr. MOSS. NBC never asked you that question?

Mr. FRANKLIN. No, sir.

Mr. MOSS. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. Mr. Franklin, you will recall the line of my questioning with reference to whether or not NBC, on its own, made any investigation to determine the truth of Mr. Stempel's statements. Was it your feeling during those two conferences with NBC that NBC was led to believe by Enright that what Mr. Stempel said was not true?

Mr. FRANKLIN. Yes.

Mr. SPRINGER. Did he say that in a positive statement?

Mr. FRANKLIN. Yes, sir.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Very briefly, Mr. Franklin, would you describe what is the function or responsibility of a public-relations position as you have with, say, a company like Barry & Enright?

Mr. FRANKLIN. It varies as naturally the needs for my services vary.

For instance, when we went to work for Barry & Enright originally, they were probably the smallest account we had at the time. Jack Barry wanted personal publicity. Dan Enright wanted public relations on a higher level—company, corporate publicity. We had to do both.

As they spiraled upward in their climb to success, our function changed. In this case, for instance, when it came to Enright & Barry getting into trouble, we had to function in a sense as a criminal lawyer would function. We had to defend a client.

The CHAIRMAN. In other words, your responsibility was not promotional in the sense of whatever the work was, but it was to assist them with their dealings with other people.

Mr. FRANKLIN. Sometimes you had some emotional problems. It was part of public relations.

The CHAIRMAN. Thank you very much.

Mr. FLYNT. Mr. Franklin, who was present at these conferences where Mr. Slote was threatening you?

Mr. FRANKLIN. There was Al Davis and myself. There was Slote. He had a young assistant attorney at the time. I forget his name now. He was there on two occasions.

Mr. FLYNT. Was Mr. Barry present at any of them?

Mr. FRANKLIN. No.

Mr. FLYNT. Mr. Enright?

Mr. FRANKLIN. No.

Mr. FLYNT. Anybody from NBC?

Mr. FRANKLIN. No.

Mr. FLYNT. Who did you talk to representing NBC?

Mr. FRANKLIN. The only discussions I had were with Kenneth Bilby and Tom Ervin.

Mr. FLYNT. What position did they hold?

Mr. FRANKLIN. Ken Bilby is head of corporate public relations, I would suspect. Public relations on the highest level.

Mr. FLYNT. How do you spell that? B-i-l-b-e-e?

Mr. FRANKLIN. B-i-l-b-y, I think.

Mr. FLYNT. Did Mr. Bilby ever ask you if "Twenty-one" was a bona fide program and a contest or whether it was a hoax or fraud?

Mr. FRANKLIN. He never asked me that question.

Mr. FLYNT. If he had asked you, what would you have told him?

Mr. FRANKLIN. I would have skirted the issue.

Mr. FLYNT. You would not have told him?

Mr. FRANKLIN. I would not have told him.

Mr. LISHMAN. I have one or two questions, Mr. Franklin.

Mr. FRANKLIN. Yes, sir.

Mr. LISHMAN. To fix these conversations, the date of the conversations that you had with representatives of NBC is it your recollection that they were all prior to May 1957?

Mr. FRANKLIN. No; I could not.

Mr. LISHMAN. Were they after May 1957?

Mr. FRANKLIN. All of these discussions?

Mr. LISHMAN. Yes.

Mr. FRANKLIN. I would not know.

Mr. LISHMAN. The late summer of 1957.

Mr. FRANKLIN. Possibly. I wouldn't know. There were so many. There was such a quick succession of things happening. As I say, I was involved in a private project of my own.

Mr. LISHMAN. Mr. Davis testified that these conversations occurred in the late summer and fall.

Mr. FRANKLIN. Then that is probably so. Mr. Davis has a way with dates and figures.

Mr. LISHMAN. I want the record to show that Mr. Franklin on January 8, 1959, appeared before the New York County Grand Jury, and fully and completely testified to the satisfaction apparently of the district attorney, and his testimony is contained in 62 pages of the minutes of that grand jury, and apparently he gave full and complete and truthful answers at that time.

Mr. FRANKLIN. Thank you.

The CHAIRMAN. Is that all?

Mr. LISHMAN. Yes.

The CHAIRMAN. Thank you very much, Mr. Franklin, for your appearance before the committee.

Mr. FRANKLIN. Thank you.

The CHAIRMAN. The committee will recess for 5 minutes.

(Brief recess.)

The CHAIRMAN. The committee will be in order.

Mr. Kletter, do you solemnly swear the testimony you give this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KLETTER. I do, sir.

The CHAIRMAN. Will you state your full name, please, sir?

TESTIMONY OF EDWARD KLETTER

Mr. KLETTER. Edward Kletter.

The CHAIRMAN. Your address?

Mr. KLETTER. 67-71 Yellowstone Boulevard, Forest Hills, Long Island.

The CHAIRMAN. What is your business or profession?

Mr. KLETTER. I am vice president and director of advertising of Pharmaceuticals, Inc.

The CHAIRMAN. You have counsel accompanying you here to advise you. May we have your counsel identified for the record?

Mr. SCHULTZ. Henry A. Schultz, 400 Park Avenue, New York.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Kletter, Pharmaceuticals, Inc., at one time employed Barry & Enright, did they not?

Mr. KLETTER. Not as direct employees.

Mr. LISHMAN. They entered into an agreement with them concerning the production of the television quiz show, "Twenty-one"?

Mr. KLETTER. That is correct.

Mr. LISHMAN. What was the date of that?

Mr. KLETTER. The original agreement—may I refer to my notes?

Mr. LISHMAN. Yes; you may refer to anything you wish.

Mr. KLETTER. The original agreement was entered into May 28, 1956.

Mr. LISHMAN. At that time what was your position?

Mr. KLETTER. I beg your pardon?

Mr. LISHMAN. At that time what was your position?

Mr. KLETTER. The opposition?

Mr. LISHMAN. Your position.

Mr. KLETTER. Oh, I am sorry. I was president of Edward Kletter Associates, an advertising agency.

Mr. LISHMAN. Were you connected with Parkson?

Mr. KLETTER. Parkson was later formed.

Mr. LISHMAN. What position did you hold with Parkson?

Mr. KLETTER. I was also president of Parkson Advertising.

Mr. LISHMAN. What was Parkson's business?

Mr. KLETTER. Advertising agency.

Mr. LISHMAN. Did it act on behalf of Pharmaceuticals, Inc.?

Mr. KLETTER. Yes; it did.

Mr. LISHMAN. Was Parkson owned and controlled by Pharmaceuticals, Inc.?

Mr. KLETTER. It was owned and controlled by certain individuals of Pharmaceuticals, Inc.

Mr. LISHMAN. Who in turn controlled Pharmaceuticals?

Mr. KLETTER. Beg pardon?

Mr. LISHMAN. Who in turn controlled Pharmaceuticals, Inc.?

Mr. KLETTER. Yes.

Mr. LISHMAN. When did you first see a kinescopic showing of "Twenty-one"?

Mr. KLETTER. I would say about March of 1956.

Mr. LISHMAN. Where did you see that?

Mr. KLETTER. I first saw it in California.

Mr. LISHMAN. Then did you approach Barry & Enright or did they approach you?

Mr. KLETTER. No; they approached us.

Mr. LISHMAN. What did they ask?

Mr. KLETTER. They wanted to know whether we would be interested in sponsoring the program.

Mr. LISHMAN. Did you eventually enter into this arrangement to sponsor the program?

Mr. KLETTER. Yes.

Mr. LISHMAN. What were the arrangements you had with Barry & Enright respecting the sponsorship, financial arrangements?

Mr. KLETTER. The financial arrangements?

Mr. LISHMAN. Yes.

Mr. KLETTER. The arrangements were that we were to pay over a 5-year period in a graduating scale beginning, I believe, with \$15,000 per program, and graduating up to \$18,500 per program for the production elements of the program, plus \$10,000 per week for prize money.

Mr. LISHMAN. What happened to the prize money if less was won in any week than the \$10,000?

Mr. KLETTER. The arrangements were under the first agreement that was drawn that at the conclusion of the 26-week period an accounting was to be made and any moneys accumulated by Barry & Enright not paid out to contestants would have been refunded to Pharmaceuticals, and subsequently every 13 weeks thereafter.

Mr. LISHMAN. So the sponsor under this arrangement had a direct financial interest in the outcome of each week's program?

Mr. KLETTER. So to speak, yes.

Mr. LISHMAN. For how long a period did Pharmaceuticals sponsor this program?

Mr. KLETTER. From October 1956 to, I believe, October 1958. I can give you the exact dates, if you wish.

Mr. LISHMAN. That is enough. Did there come a time during this period when your attention was called to the fact that certain contestants desired an advance?

Mr. KLETTER. There were two such occasions.

Mr. LISHMAN. Do you recall those occasions?

Mr. KLETTER. Yes. I recall an occasion of Mr. Van Doren, and an occasion of, I believe, Mrs. Nearing. I am not sure now.

Mr. LISHMAN. In connection with the advance of \$5,000 to Mr. Van Doren, who proposed making that advance to you?

Mr. KLETTER. Actually it was not made to us as a request for approval or disapproval, because it really did not concern our arrangement. I think Barry & Enright called one day and merely mentioned to me that Van Doren—it was before Christmas and he had accumulated \$100,000, then—or more—requested that he wanted to buy some gifts for his family and what not, and would like to get an advance of \$5,000. Had I any objections? Since it didn't affect our budget in any way, I saw no reason why we should have any objections.

Mr. LISHMAN. Wasn't it theoretically possible at that time that Mr. Van Doren might have lost all of his prize winnings?

Mr. KLETTER. Not likely, but theoretically it could have happened.

Mr. LISHMAN. You voiced no objection to the giving of this advance to Mr. Van Doren at that time?

Mr. KLETTER. No; because it would not have affected our financial payment to Barry & Enright, because if Mr. Van Doren had lost all of his winnings and those \$5,000 were paid to him, those \$5,000 would have been paid to him through Barry & Enright and not by us.

Mr. LISHMAN. Why did Mr. Enright consult you about getting this approval for this advance?

Mr. KLETTER. Why did he?

Mr. LISHMAN. Yes.

Mr. KLETTER. I presume to get our approval in the event he may have gotten to the point where that \$5,000 would have been an out-of-pocket cost to them, perhaps come to us and say, "Gee, we can't afford it, why don't you do something about it, or help us with it or pay half of it, or what it may be." I don't know the reasons.

Mr. LISHMAN. Mr. Kletter, did you closely follow the ratings that were given to this program, "Twenty-One"?

Mr. KLETTER. Yes; we do on all shows.

Mr. LISHMAN. At the time that this advance was made, of \$5,000, to Mr. Van Doren on December 19, 1956, do you recall what ratings were for the program?

Mr. KLETTER. I can't recall the exact percentage ratings, but I can tell you that they were very low.

Mr. LISHMAN. Very low?

Mr. KLETTER. Yes, sir.

Mr. LISHMAN. At any time in your conversation with Mr. Enright or representatives of Barry & Enright, did you discuss the contestants that Pharmaceuticals would like to have continued on the show, because of their pulling appeal to the public?

Mr. KLETTER. Never.

Mr. LISHMAN. Did you ever have conversations with Enright, let us say, at lunch, at which you would indicate to him, so-and-so is doing very well. I certainly hope he continues on the program?

Mr. KLETTER. Oh, yes. I, the same as 40 million other Americans.

Mr. LISHMAN. You would make the statement at that time?

Mr. KLETTER. Yes.

Mr. LISHMAN. Did you ever at such a meeting say to Mr. Enright, Well, I certainly hope that so-and-so won't be on that program too long?

Mr. KLETTER. Never.

Mr. LISHMAN. The date of the advance to Mr. Van Doren, as I will show you from a check dated December 19, 1956, made to his order and charged to advance on prize money, I would like to have you look at, so you may refresh your recollection in connection with your answer that at that time he had already won almost \$100,000.

(Document was handed to the witness.)

Mr. KLETTER. I am sorry, sir. I do not quite get the point.

Mr. LISHMAN. On December 19, 1956, had Mr. Van Doren then reached the \$100,000 mark?

Mr. KLETTER. I really don't know.

Mr. LISHMAN. Did Mr. Enright also approach you and inquire whether you would approve the giving of an advance to Mrs. Nearing, a contestant on "Twenty-one"?

Mr. KLETTER. I think so. I am not quite as clear about that as I am about Mr. Van Doren. But I do recall some discussions about Mrs. Nearing.

Mr. LISHMAN. Did you state to Mr. Enright that you would have no objection to the giving of such an advance to Mrs. Nearing?

Mr. KLETTER. That is correct, because we would have no objections to any advances to any contestants that they wished to give advances to.

Mr. LISHMAN. Again, do you know why Mr. Enright should come to you and request your approval before the making of such an advance?

Mr. KLETTER. Only perhaps to cover himself for future liability.

Mr. LISHMAN. To refresh your recollection, I am advised that Mr. Van Doren became the champion on December 5. So the date of that check is December 19. In that interim he certainly could not have won \$100,000.

Mr. KLETTER. If that is the record, then you are quite right.

Mr. LISHMAN. Did there also come a time when Mr. Enright came to you and asked your approval if he could make an advance totaling \$18,500 to the contestant Stempel?

Mr. KLETTER. No, sir.

Mr. LISHMAN. Did you ever discuss the making of that advance to Mr. Stempel with Mr. Enright?

Mr. KLETTER. To the best of my recollection in the Stempel matter, I believe the following to be the fact and I am not absolutely sure about this.

Mr. LISHMAN. Mr. Kletter, in order to save time and to refresh your recollection, I will hand you the pages of your testimony before the grand jury and see if it refreshes your recollection.

(Document handed to the witness.)

Mr. KLETTER. Yes. That is just about what I was going to say to you. That I am not quite sure about the exact amounts or the discussions. I believe that is the testimony you showed me.

But I do recall that there was some discussion of advances to Stempel. The amounts I don't believe were discussed. As I recall, the reason for the advance was that Mr. Stempel came to Enright the day of the program and said, I will refuse to go on unless you first advance me X dollars, whatever they be. He said, I want to do it. I said again, That is up to you fellows. If you want to do it we have no objections.

Mr. LISHMAN. Did you know at the time when these discussions were had as to the advances that each of the contestants involved could have lost all their winnings?

Mr. KLETTER. Oh, yes; very well. Again, I point out to you, sir, that this in no way could affect any costs or any moneys that we paid to Barry & Enright.

Mr. LISHMAN. Is it correct that the only things you were interested in was the amount that was won on the show and not the actual amount of money that was paid over to a contestant by Barry & Enright?

Mr. KLETTER. That is correct. May I explain that so that perhaps the committee will be clear on this point because I was asked the same thing on the grand jury and I would like to say this.

When we purchased this program for our sponsorship, for all practical purposes we never associated prize moneys as against other component costs of the program. As far as we were concerned for our advertising budget purposes, the \$25,000 was the sum that we were paying for the program and were willing to pay for the program, and we never associated the two as two separate items in our own bookkeeping nor in our own budgeting.

We were sure and guaranteed that never could it exceed this \$25,000. This was our only interest.

Mr. LISHMAN. Mr. Kletter, isn't it a fact that if less than \$10,000 in prize money was paid out in any week you were entitled to get the difference back?

Mr. KLETTER. Not in any week. Over a period of time.

Mr. LISHMAN. Over a period of time?

Mr. KLETTER. Yes.

Mr. LISHMAN. But in order to ascertain how much you would be entitled to get back you would certainly have to keep track of what went on, would you not?

Mr. KLETTER. Correct, and track was kept. Again, I repeat that we had never intended, nor have our budgets been so set, anticipating refunds.

Mr. LISHMAN. But you had an interest in every situation in which less than \$10,000 prize money was paid out, did you not?

Mr. KLETTER. Yes; of course, as normal business practice you normally would have records and interests.

Mr. LISHMAN. Did there come a time when the contestant Jackman, who has been a witness here, stated publicly that he had won a prize of \$24,500, and, in fact, received from Barry & Enright only \$15,000?

Mr. KLETTER. I never had any knowledge of that. I personally had no knowledge of that until it was brought up as a point of question, I believe, by Mr. Stone.

Mr. LISHMAN. Didn't your company keep track of the prize money?

Mr. KLETTER. Yes, but we had no knowledge of what was paid to the contestant, sir.

Mr. LISHMAN. In this connection——

Mr. KLETTER. We did not pay directly to contestants their winnings. We paid Barry & Enright each week \$25,000, not in two separate payments for prizes and program, but in one lump sum. They in turn, paid the contestants whatever money they won on the program.

Mr. LISHMAN. How much did Barry & Enright account back to you in connection with Jackman as payment for his prize money?

Mr. KLETTER. I would have to check my records. I do not recall.

Mr. LISHMAN. Is it a fact that one contestant to your knowledge was paid more than she won by Barry & Enright?

Mr. KLETTER. That, too, I didn't know until it came out in our testimony or at the hearings that we held in the grand jury.

Mr. LISHMAN. Is it a fact that Mrs. Nearing on one contest won \$5,500 ostensibly and she was actually paid, by Barry & Enright, \$10,000?

Mr. KLETTER. This came to my attention later. I was not aware of it at the time.

Mr. LISHMAN. Did not, in every instance, Barry & Enright furnish you with a report to show that you were not being overcharged?

Mr. KLETTER. Well, Mr. Lishman, I personally did not see reports every week. These reports were kept and I got periodic reports from our bookkeeping department showing the status of the prize moneys as they were at a given time, either overages or under the payments made to them. I didn't see weekly reports.

Mr. LISHMAN. If I may refresh your recollection, I would like to read from your testimony.

Mr. KLETTER. All right, sir.

Mr. LISHMAN. Before the grand jury:

Q. What we are trying to arrive at, Mr. Kletter, is this: We have already established that in the case of the contestant Jackman, even though he won \$24,000 he only received \$15,000 and there was a report that was furnished you so that Barry & Enright did not overcharge you.—A. Correct.

Q. No question.—A. No. Had they, we would have certainly seen to it it was not part of the budget.

Mr. KLETTER. Would you mind reading that last part again?

Mr. LISHMAN. This is a question to you:

Q. We have already established in the case of the contestant Jackman, even though he won \$24,000 he only received \$15,000 and there was a report that was furnished you so that Barry & Enright did not overcharge you.—A. Correct.

What does that mean?

Mr. KLETTER. That report you quoted from there, was the report that was shown to me at that time during my testimony, a report that I had not seen theretofore. I agreed that this was a correct report as I would now if you showed it to me again.

Mr. LISHMAN. But that was the report made to your company?

Mr. KLETTER. That is correct. I personally had not seen it before. I think that is what the statement really refers to.

Mr. LISHMAN. Did you make any inquiries as to why Jackman received only \$15,000 when he had actually been publicized as winning \$24,500?

Mr. KLETTER. After I found out about this, Mr. Lishman, there was no need of my making any inquiry because the testimony was already in evidence. I heard the story as I heard it again today.

Mr. LISHMAN. When this report was originally furnished to your company, did anybody in the company make any inquiries as to why this happened?

Mr. KLETTER. To my knowledge, no.

Mr. LISHMAN. Did they ask you?

Mr. KLETTER. I beg your pardon?

Mr. LISHMAN. Did anyone ever ask you about it?

Mr. KLETTER. To my best recollection, I don't recall it.

Mr. LISHMAN. Was it ever reported to the officials of the company?

Mr. KLETTER. As an incident, as a particular incident, to my knowledge, no. I think I might throw a little light, if I may, on this entire question of the prize moneys.

At the conclusion of our last program in October of 1958, there was some \$75,000 more, or \$75,000 awarded in greater amounts to contestants than Pharmaceuticals, Inc., paid to Barry & Enright or NBC.

So you see that some of these theoretical questions really have no great significance or no great meaning.

By themselves, they may seem important. But on the overall, they are quite unimportant and for that reason we had paid no definite and particular attention to each week's winnings.

Mr. LISHMAN. Mr. Kletter, in the light of the accusations that have been made that the program was fixed, the unusual situation of advances being made to contestants under conditions whereby each might have lost all that he had won, the knowledge of the sponsor invites certain real scrutiny.

Mr. KLETTER. With this exception. I don't believe that advances in themselves would indicate that the program was fixed in any way, no more than if an employee would come to me and say, I would like an advance on my salary. I need \$10 more this week. Would you advance it until I get paid at the end of the month. That is all it meant to us at that time.

Mr. LISHMAN. At the beginning of your testimony, you said one of the reasons why you gave no objection to the advance of \$5,000 to Mr. Van Doren was, apparently you believed, to the best of your memory, that he was a winner to the tune of \$100,000 and it did not seem likely that he would not be a good man to repay.

Mr. KLETTER. I was in error.

Mr. LISHMAN. I have here now—and you can correct me if I am wrong—a record which shows that at or about the time of this advance of \$5,000 Mr. Van Doren was a winner only to the tune of \$20,000 and he could have lost this, as we all know, in one game without any trouble.

Mr. KLETTER. If that is the record, I agree to it.

Mr. LISHMAN. Are you absolutely certain that you, as a sponsor, did not know that there was some assurance that certain contestants would be continued on the shows?

Mr. KLETTER. Assurances by whom?

Mr. LISHMAN. By Barry & Enright.

Mr. KLETTER. None whatever.

Mr. LISHMAN. When did you first learn that in the show, "Twenty-one," assistance had been given to contestants by Barry & Enright?

Mr. KLETTER. The day I read it in the Journal-American, I believe, the same as everyone else did.

Mr. LISHMAN. About what was that date?

Mr. KLETTER. I would say sometime in August of 1958. I was shocked, I might say.

Mr. LISHMAN. Did anyone in your organization have any knowledge of this, do you believe?

Mr. KLETTER. No, I do not believe so.

Mr. LISHMAN. How closely did you follow these programs?

Mr. KLETTER. In what way, sir?

Mr. LISHMAN. In determining the quality appeal they were having to the buying public?

Mr. KLETTER. Frankly, I was an enthusiast of the show and the "\$64,000 Question" and the other quiz shows, as many millions of other people were, and I watched them at home with as much enthusiasm, admiration, and awe as anyone else may have done.

We personally did not in any way—that is, we, the sponsor or the agency—have anything whatever to do with the production of the program itself. Our only concern was with the production of our commercials on the program.

Mr. LISHMAN. Did your agreement with Barry & Enright provide any control in Pharmaceuticals, Inc., over the contents of the programs?

Mr. KLETTER. No. Only to the standard morals clauses and other clauses that you find in these types of agreements.

Mr. LISHMAN. Did there come a time when you terminated your arrangements with Barry & Enright?

Mr. KLETTER. When we terminated our arrangements?

Mr. LISHMAN. Yes.

Mr. KLETTER. You mean the last time the program was canceled?

Mr. LISHMAN. Yes, when you assigned the contract.

Mr. KLETTER. Yes. Subsequently to our original agreement that we spoke of earlier, we assigned our rights to the program to the National Broadcasting Co. I believe that was in March of 1958.

Mr. LISHMAN. Was any consideration paid for that assignment?

Mr. KLETTER. The consideration—there was a consideration—was not really to the assignment as much as a continuation of a previous arrangement that we had with NBC whereby they contributed, which is not customary, to the cost of the program that we bought in certain time periods. That was continued.

Mr. LISHMAN. I have concluded.

The CHAIRMAN. Mr. Mack, do you have any questions?

Mr. MACK. Did you terminate your agreement immediately after you read this in the Journal-American?

Mr. KLETTER. No, I think about several weeks later.

Mr. MACK. Did you consider that your agreement had been violated by the other parties?

Mr. KLETTER. Beg pardon?

Mr. MACK. Did you consider that your agreement had been violated by this production?

Mr. KLETTER. If the facts as carried in the press of the time, if they were proven to be facts, we would have said yes, our agreement would have been violated very definitely.

Mr. MACK. I understood you to say a few minutes ago that you assumed that they were facts.

Mr. KLETTER. No, no. As a matter of fact, when we——

Mr. MACK. I want to withdraw that. That is not exactly what you said. What you said was that you were greatly disappointed when you read this.

Mr. KLETTER. More than disappointed. Shocked.

Mr. MACK. You were shocked?

Mr. KLETTER. Right.

Mr. MACK. I assume from that you thought that the contents of the Journal-American article were factual?

Mr. KLETTER. No; we did not believe that they were facts.

Mr. MACK. That is the point I am making.

Mr. KLETTER. They were accusations. At that time we felt that we had to get more information in order to prove that they were facts before we would take any action.

Mr. MACK. If I recall correctly you said that was the first time that you knew.

Mr. KLETTER. That is correct.

Mr. MACK. That this program was fixed?

Mr. KLETTER. That was the first inclination that we had that it might be. We didn't know.

Mr. MACK. I misunderstood you, then.

Mr. KLETTER. I am sorry.

Mr. MACK. I understood that you said that this was the first time that you knew that the program was fixed.

Mr. KLETTER. Then I misphrased what I meant to say. The first knowledge that we had that it might have been.

Mr. MACK. I have no further questions.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. Mr. Kletter, you are vice president of Pharmaceuticals, Inc.?

Mr. KLETTER. That is correct.

Mr. SPRINGER. Is that a pharmaceutical company or an advertising company?

Mr. KLETTER. A pharmaceutical company.

Mr. SPRINGER. Is your position as vice president of that company an administrative position of the pharmaceutical firm, or are you a public relations or advertising person?

Mr. KLETTER. No. I am with the firm. I am in charge of advertising.

Mr. SPRINGER. You are then vice president in charge of advertising?

Mr. KLETTER. That is correct, sir.

Mr. SPRINGER. There is no intervening agency or corporation between Pharmaceuticals and Barry & Enright?

Mr. KLETTER. Yes, there is an advertising agency.

Mr. SPRINGER. What is that advertising agency?

Mr. KLETTER. Parkson Advertising Agency, currently.

Mr. SPRINGER. Is Parkson Advertising Agency a subsidiary of Pharmaceuticals?

Mr. KLETTER. It is.

Mr. SPRINGER. What position do you hold with that organization?

Mr. KLETTER. None.

Mr. SPRINGER. Are you connected with it in any way?

Mr. KLETTER. No, sir. Only in a business way.

Mr. SPRINGER. Was the Barry & Enright contract with Parkson Co. or Pharmaceuticals, Inc.?

Mr. KLETTER. On behalf of Pharmaceuticals by Parkson. Originally, Kletter Associates, and later Parkson. But on behalf of its client, Pharmaceuticals.

Mr. SPRINGER. Then all of the advertising of Pharmaceuticals, Inc., in reality, is carried on by Parkson; is that right?

Mr. KLETTER. That is correct, sir. As well as some other accounts that Parkson has.

Mr. SPRINGER. Is that a separate corporation?

Mr. KLETTER. Yes; it is.

Mr. SPRINGER. Who is president of that corporation?

Mr. KLETTER. Mr. Ted Bergman.

Mr. SPRINGER. Did he or Parkson Co. have part in the originating of the contract between Pharmaceuticals and Barry & Enright?

Mr. KLETTER. No, he did not at that time because he was not with the agency.

Mr. SPRINGER. This contract was executed by you; is that correct?

Mr. KLETTER. By me; yes, sir.

Mr. SPRINGER. Mr. Kletter, was the budget under which Barry & Enright operated set up by Pharmaceuticals, Inc.?

Mr. KLETTER. No.

Mr. SPRINGER. Who set up that budget?

Mr. KLETTER. The budget by which they operated?

Mr. SPRINGER. The budget by which the contract operated.

Mr. KLETTER. Oh, yes. In other words, the amount of moneys paid to Barry & Enright.

Mr. SPENCER. Is that true of all advertising contracts of Pharmaceuticals, Inc.?

Mr. KLETTER. Yes.

Mr. SPRINGER. This contract between Pharmaceuticals, Inc., and Barry & Enright lasted for approximately 2 years, from October 1956, until October 1958; is that correct?

Mr. KLETTER. Theoretically a major portion of that with them, and then the balance with the National Broadcasting Co.

Mr. SPRINGER. Your contract called for \$25,000 a week; is that true?

Mr. KLETTER. That is correct.

Mr. SPRINGER. \$100,000 a month, roughly, or \$1.2 million a year.

Mr. KLETTER. That is correct, sir.

Mr. SPRINGER. How much in addition to that figure did you pay to NBC for broadcasting this program?

Mr. KLETTER. Then we paid NBC for time.

Mr. SPRINGER. How much was that contract?

Mr. KLETTER. I would have to just guess.

Mr. SPRINGER. Roughly.

Mr. KLETTER. Roughly \$45,000 or \$50,000 a week.

Mr. SPRINGER. In other words, this total contract would come to approximately \$3.5 million a year.

Mr. KLETTER. If your mathematics is correct, and I assume it is, yes.

Mr. SPRINGER. In dollars and cents, how large a corporation is Pharmaceuticals, Inc.?

Mr. KLETTER. In volume, business done?

Mr. SPRINGER. First of all in dollars and cents; what is its capital?

Mr. KLETTER. I don't know.

Mr. SPRINGER. What volume of business in dollars and cents did it do each year?

Mr. KLETTER. Approximately \$25 million.

Mr. SPRINGER. This means, then, that approximately a sixth of all of its income was devoted to advertising over this 2-year period?

Mr. KLETTER. More than that because we had other advertising media that we used in addition to "Twenty-one."

Mr. SPRINGER. Primarily, as I understand it, Pharmaceuticals makes Geritol; is that right?

Mr. KLETTER. No, not primarily. We make a number of products.

Mr. SPRINGER. Would you name the products that you make?

Mr. KLETTER. Surely. Sominex, Williams' Aqua-Velva, Williams' Electric Preshave Lotion, Williams' Shaving Cream, Kremel Hair Tonic, Conte Shampoo, Zarumin, and Devorex.

Mr. SPRINGER. Those are your principal products?

Mr. KLETTER. Those are our principal products.

Mr. SPRINGER. On this program, you advertised chiefly Geritol, Sominex, and Zarumin, am I right?

Mr. KLETTER. No. The films that you saw yesterday and today it so happened had those products on, but we also had Williams' Aqua-Velva Aftershave Lotion, we had the Electric Preshave Lotion. We had Williams' Shaving Cream on it. We had Sominex on it. We changed over. Over the period of 2 years we may have had 10 products advertised.

Mr. SPRINGER. On the programs that I saw, and that probably was not over half a dozen, maybe eight, Geritol was the one advertised.

Could you tell me approximately the number of bottles of Geritol that were being sold in October, 1956?

Mr. KLETTER. I could not answer that.

Mr. SPRINGER. As an advertising man, you have some idea whether your sales went up or down in that 2-year period, don't you?

Mr. KLETTER. Yes.

Mr. SPRINGER. Could you tell this committee what the boost in sales was during that time if there was one?

Mr. KLETTER. All I can answer is that that period of time was a development period for Geritol generally. We not only sponsored program "Twenty-one," but at that time we also sponsored "To Tell the Truth," the "Original Amateur Hour," the "Guy Lombardo Show." As a matter of fact, those 2 years were really our years of development.

I frankly could not sit here and honestly tell you that "Twenty-one" had any greater measure of success for Geritol than the "Guy Lombardo Show." As a matter of fact, we have some records which lead us to believe that Guy Lombardo did as much, if not more, for Geritol than "Twenty-one."

Mr. SPRINGER. Mr. Kletter, during this 2-year period, for how many weeks was "Twenty-one" the top program?

Mr. KLETTER. The top program?

Mr. SPRINGER. Yes.

Mr. KLETTER. With us?

Mr. SPRINGER. The top program on the air by ratings.

Mr. KLETTER. It was never the top program.

Mr. SPRINGER. How far from the top was it?

Mr. KLETTER. To my knowledge, in the 2 years only 1 time did it reach the top 10.

Mr. SPRINGER. Only one time?

Mr. KLETTER. One time.

Mr. SPRINGER. Let me ask you this, to put it another way: For how many weeks of that 104 weeks was it the top quiz show?

Mr. KLETTER. I don't think it ever was the top quiz show.

Mr. SPRINGER. Are you positive of that?

Mr. KLETTER. I am pretty certain.

Mr. SPRINGER. On the Hooper ratings?

Mr. KLETTER. Not Hooper; but Nielson. We don't use Hooper any longer.

Mr. SPRINGER. What about TV Guide?

Mr. KLETTER. They don't have a rating service.

Mr. SPRINGER. In TV Telequiz was it ever rated tops?

Mr. KLETTER. I am not familiar with that service at all.

Mr. SPRINGER. Did "Twenty-one" win any awards during that 2-year period?

Mr. KLETTER. What type of awards, sir?

Mr. SPRINGER. Was it voted the best TV quiz show of the year?

Mr. KLETTER. I think one time some magazine or something gave it an award or something, but those are inconsequential. We pay no stock to those things at all.

Mr. SPRINGER. Mr. Kletter, would you supply the record of this hearing with the sales of Geritol for the month of October 1958? Can you do it by the month?

Mr. KLETTER. Yes; we have it by months.

Mr. SPRINGER. Would you also, then, give us the monthly sales of Geritol for each one of those months that "Twenty-one" was on the air?

Mr. KLETTER. Surely.

Mr. SPRINGER. Mr. Kletter, may I say without prolonging this hearing, one of the purposes of this hearing is to determine whether or not unfair trade practices were used by any company in boosting its sales. We have reason to believe, with regard to another program, that unfair trade practices were directly responsible for it boosting sales. This is an unethical practice in our opinion. When you first learned of the charges that there was a fix on, so to speak, did you, or your attorney or anybody for your company, make an investigation to determine whether or not the charges were true?

Mr. KLETTER. Yes. I would like to just add one other thought to your last statement. We believe that overall the program "Twenty-one" rather than boosting the sales of Geritol had an adverse affect on the product because of what has subsequently happened.

Mr. SPRINGER. Do you expect to show that by sales figures?

Mr. KLETTER. I think we probably could.

Mr. SPRINGER. Are you going to attempt to show that by producing the sales figures after the program "Twenty-one" went off the air?

Mr. KLETTER. Yes, we can.

Mr. SPRINGER. I am especially interested in knowing the figures during the time that "Twenty-one" was on the air.

Mr. KLETTER. I am sure we will have no objections to giving you that.

Mr. SPRINGER. Will you answer the second question, if you recall, Mr. Kletter?

(Question read.)

Mr. KLETTER. Yes.

Mr. SPRINGER. Before you answer that, as a part of my original question, would you also supply for the record of this hearing the months of August and September 1956 as well as the month of October 1958?

Mr. KLETTER. October 1956.

Mr. SPRINGER. August and September of 1956 through October 1958. If you also want to supply any others you are free to do that, too.

(The following figures were subsequently furnished by Mr. Kletter:)

Gcritol sales

<i>Year and month</i>	<i>Dollar sales</i>	<i>Year and month</i>	<i>Dollar sales</i>
1956—January-----	\$1, 136, 000	1958—January-----	\$1, 644, 000
February-----	672, 000	February-----	812, 000
March-----	676, 000	March-----	1, 215, 000
April-----	1, 192, 000	April-----	805, 000
May-----	707, 000	May-----	1, 449, 000
June-----	701, 000	June-----	792, 000
July-----	736, 000	July-----	776, 000
August-----	1, 408, 000	August-----	956, 000
September-----	745, 000	September-----	1, 745, 000
October-----	976, 000	October-----	853, 000
November-----	730, 000	November-----	609, 000
December-----	803, 000	December-----	723, 000
1957—January-----	1, 675, 000	1959—January-----	1, 136, 000
February-----	1, 007, 000	February-----	687, 000
March-----	967, 000	March-----	841, 000
April-----	1, 802, 000	April-----	879, 000
May-----	1, 161, 000	May-----	1, 064, 000
June-----	740, 000	June-----	717, 000
July-----	953, 000	July-----	628, 000
August-----	1, 851, 000	August-----	720, 000
September-----	1, 055, 000	September-----	1, 439, 000
October-----	968, 000		
November-----	813, 000		
December-----	883, 000		

Mr. SPRINGER. May I ask you one other question: At the time that the show was on the air, did you consider, on the basis of the sales figures, that the show was a good \$31½-million-per-year advertising investment?

Mr. KLETTER. Yes; we believed that.

Mr. SPRINGER. Do you believe that today?

Mr. KLETTER. We are reluctant about that today.

Mr. SPRINGER. Do you recall when the statement was issued by NBC? If not the exact month, do you recall that a statement was issued to the effect that they had made an investigation and had found the fix charges to be baseless? Is that right, Mr. Counsel?

Mr. LISHMAN. August 1958.

Mr. KLETTER. This is really following your question that you asked, what did we do and we found out because that was in August 1958 after we read the papers.

Mr. SPRINGER. Can you answer the question now?

Mr. KLETTER. Yes; I will answer. Immediately when we read the reports in the newspaper we contacted NBC. We had a meeting with NBC. Our position at the time was that until such time that we have any facts to back up the newspaper stories that we would sit tight. The reason for that, incidentally, is that we had dealt for many years with Barry & Enright. We sponsored their show, "Life Begins at 80."

Mr. SPRINGER. Is that an existing show?

Mr. KLETTER. Not currently. I am going back in our relationship with Barry & Enright and when it started.

Then we sponsored their show called "Juvenile Jury." Then we sponsored a show of theirs called "Wisdom of the Ages," so our relation with the Barry & Enright organization or with these two men specifically dates back to happy associations back to 1950 or 1951. We

were not ready to discard what we believed was honesty and genuineness of these two people as we got to know them because of a newspaper story. Until such time as we had at least some specific or basic facts, and if not at least facts, some indications that these might be facts, we were not ready to throw these men out into the street, so to speak, until we had some facts.

So our position at that time, as we told NBC is, we are going to sit tight. We have complete and full confidence in the integrity of these two gentlemen, and until such time as they are proven wrong we are going to continue, even though we knew at the time that we were suffering saleswise because, immediately after these newspaper stories broke, the program's ratings dropped. Don't take this as statistical fact, but by at least 50 percent. Yet we backed it up until such time as we found that there was something to this.

So we went to NBC at the time and discussed the matter. Their position was the same as ours. They, too, did not believe the rumors and the stories. Until such time that they found them to be factual that they would do nothing of taking the program off the air.

Mr. SPRINGER. Your explanation is all right.

Now, I want to ask my question: What did you or your company do toward making an investigation of Stempel's charges after they were revealed in the newspaper?

Mr. KLETTER. Of course, we never met Stempel nor did we ever meet any of the contestants. We did bring Barry & Enright into our offices and we asked about these accusations. They assured us that there was nothing to this. This is merely a story of Stempel who, in their words, was a madman, and there was nothing to it, the investigation will prove it to be so, and we believed them.

Mr. SPRINGER. Again to my question, I take it the inference is that neither you or your company did anything toward investigating these charges separately on your own; is that correct?

Mr. KLETTER. By going to contestants directly; no, sir.

Mr. SPRINGER. When Snodgrass' story also appeared shortly thereafter, did you then make any investigation?

Mr. KLETTER. Not directly with the contestant; no, sir.

Mr. SPRINGER. In any of your conversations with NBC did they indicate that they were making any separate investigation?

Mr. KLETTER. They said that they did make an investigation of their own and found the accusations groundless.

Mr. SPRINGER. That was their statement to you?

Mr. KLETTER. That is correct.

Mr. SPRINGER. They made an investigation of their own?

Mr. KLETTER. That is right.

Mr. SPRINGER. Mr. Chairman, that is all.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS. Mr. Kletter, where were you born?

Mr. KLETTER. I beg your pardon?

Mr. ROGERS. Where were you born?

Mr. KLETTER. I was born in Poland, sir.

Mr. ROGERS. How long have you been in this country?

Mr. KLETTER. Thirty-nine years, sir.

Mr. ROGERS. Was your name Kletter all the time?

Mr. KLETTER. Yes, sir. I am proud of it.

Mr. ROGERS. Have you ever operated a business under an assumed name or under any other name?

Mr. KLETTER. No, sir. I like the name Kletter, sir.

Mr. ROGERS. How long have you been with Pharmaceuticals?

Mr. KLETTER. Since 1953.

Mr. ROGERS. Who were you with prior to that time?

Mr. KLETTER. I was with the Whalen Drug Co. for 26 years. You have some of their stores in Washington.

Mr. ROGERS. Where were you located then?

Mr. KLETTER. I was practically all over the country for them but based for a number of years in Los Angeles, some in Buffalo, Syracuse, Washington, D.C.

Mr. ROGERS. Were you in the advertising end of it?

Mr. KLETTER. No. I was in the supervisory operating end of it.

Mr. ROGERS. That is, you were in a managerial position? You had to keep up with all these stores and how much business they were doing and how it was operating?

Mr. KLETTER. That is correct. I started scrubbing shelves but finally worked up to that position after 26 years; yes, sir.

Mr. ROGERS. That is the American way to do it, all right. But you did obtain a managerial position?

Mr. KLETTER. Yes, sir.

Mr. ROGERS. Mr. Kletter, you said you went to work for this group in 1953?

Mr. KLETTER. Yes, that is correct.

Mr. ROGERS. Were you offered this position because of your particular abilities that you displayed with Whalen Drug?

Mr. KLETTER. I hope so.

Mr. ROGERS. You were looked upon as a good managerial executive, were you not?

Mr. KLETTER. I think so.

Mr. ROGERS. In handling the Pharmaceuticals business, when did you first have your experiences with TV?

Mr. KLETTER. My experience with TV came prior to that. I started in TV actually in 1949.

Mr. ROGERS. Handling that part of the business for Whalen?

Mr. KLETTER. Yes.

Mr. ROGERS. You continued that, of course, in this?

Mr. KLETTER. Then I had 1 year with the Du Mont Television network.

Mr. ROGERS. With the Du Mont Television network?

Mr. KLETTER. Yes.

Mr. ROGERS. You were pretty well familiar with the way these programs were operated all the time and have been ever since you have been connected with the Pharmaceuticals, Inc.?

Mr. KLETTER. Yes. I think I am quite familiar with television.

Mr. ROGERS. Don't you people watch sales pretty closely?

Mr. KLETTER. Any corporation that doesn't, soon finds themselves out of business.

Mr. ROGERS. They have to know almost from day to day, do they not, Mr. Kletter?

Mr. KLETTER. At least from month to month.

Mr. ROGERS. Do you keep that in the form of a graph that you watch the little line go up or down as the sales go up or down?

Mr. KLETTER. We surely do.

Mr. ROGERS. You watch it pretty close, do you not?

Mr. KLETTER. Yes, sir.

Mr. ROGERS. In this particular business were you keeping that on a daily basis or weekly basis or how were you keeping it?

Mr. KLETTER. Monthly, sir.

Mr. ROGERS. Monthly?

Mr. KLETTER. Yes.

Mr. ROGERS. Did you not watch each week as to whether or not these sales went up or down after these programs?

Mr. KLETTER. We watch our sales, as I mentioned, constantly. Not particularly to any given program but in general as good business practice would indicate.

Mr. ROGERS. You could tell, could you not, whether or not a program like "Twenty-one" was getting results for you?

Mr. KLETTER. Of course, yes.

Mr. ROGERS. If you could not do that, you would not be paying \$3,500,000 a year for it?

Mr. KLETTER. Incidentally, today in television that is pretty cheap.

Mr. ROGERS. \$3,500,000 a fellow would keep his hands on the books pretty well.

Mr. KLETTER. Yes, sir.

Mr. ROGERS. Especially when you are doing a \$25 million business a year. That is a sizable chunk out of it. Isn't it a fact that after these programs that you would watch the sales for the next week to see whether they went up or down to see what impact it had?

Mr. KLETTER. No. We could never have that close a barometer because—we don't make sales directly to consumers.

Mr. ROGERS. I understand that.

Mr. KLETTER. By the time we get a consumer reaction it may take as much as 90 days before we would actually feel the reaction to an advertising impact in our house sales.

Mr. ROGERS. Then there would be no way you could tell, you mean, from a TV quiz program whether or not you were getting results until 90 days?

Mr. KLETTER. Oh, yes. As a matter of fact, it is difficult to even decide whether a TV program is productive before 90 days.

Mr. ROGERS. It is what? I did not get that.

Mr. KLETTER. It is difficult to arrive at whether or not a television program, or any advertising for that matter, is productive before 90 days.

Mr. ROGERS. Did you talk to Mr. Enright or Mr. Barry every week about the program.

Mr. KLETTER. Not necessarily. Sometimes three or four times a week. Sometimes not for a month.

Mr. ROGERS. Sometimes you did not talk to them for a month?

Mr. KLETTER. That is right.

Mr. ROGERS. Is that when you would voice your opinion as to whether or not a certain contestant was a good man or a bad man?

Mr. KLETTER. The only time I ever voiced my opinion on it was what I liked to see on the screen. If I liked somebody, like I like Mr. Van Doren, I loved him.

Mr. ROGERS. You were doing it from a personal standpoint?

Mr. KLETTER. That is right.

Mr. ROGERS. Rather than as a business executive?

Mr. KLETTER. That is correct, sir.

Mr. ROGERS. You are telling the committee that you were not watching it from that angle and that you had no desire to keep a man on the program or a woman on the program or to get one taken off?

Mr. KLETTER. Never, sir.

Mr. ROGERS. You never made such a statement to Mr. Enright, Mr. Freedman, or anyone else?

Mr. KLETTER. No, sir. I said this is a pretty good contestant, I hope he doesn't quit on us, or something like that.

Mr. ROGERS. Who is that?

Mr. KLETTER. Any contestant.

Mr. ROGERS. You mean you would just say that, you hope he doesn't quit?

Mr. KLETTER. That is right.

Mr. ROGERS. But you made no indication at all to them that you thought they ought to get rid of him or to keep someone else?

Mr. KLETTER. Mr. Rogers, both Mr. Barry and Mr. Enright knew us very well. They knew the efficacy of Pharmaceuticals, Inc., and knew that even such a remote suggestion would never come from us.

Mr. ROGERS. That is one of the things that has worried me because after you found out that there was some cloud of suspicion on this program you made no effort to go to either of the people who were complaining to find out from them. You took Barry & Enright's word for it, as I understand it.

Mr. KLETTER. I think you must realize this, that because someone points a finger at someone and says he is a crook doesn't necessarily mean that immediately people who have been associated together for years immediately take that as gospel truth and say yes, he is a crook and, therefore, I will have nothing to do with you because you have dealt with him.

Mr. ROGERS. I understand that. The things that I am thinking about is this. Did your sales drop off after this revelation in the papers?

Mr. KLETTER. Not sales. Again I can't answer that factually because again I say it takes about 90 days to feel a sales impact, up or down.

Mr. ROGERS. Did this revelation have a bad impact on your sales in the final analysis?

Mr. KLETTER. Yes; we think it has.

Mr. ROGERS. Did you drop the program after you found out it did have a bad impact?

Mr. KLETTER. Not so much because of that. I think after we got involved in it more and after we got all the stories and after we met with Mr. Stone and the grand jury, then we began to smell that probably something—I believe we were mad. We did not take this lying down. We finally decided that there is something behind this and we canceled forthwith and we would have done it 2 years ago if we had found out that a Mr. Stempel was being coached even after the third program. We would have forthwith canceled without any question.

What amazes me, incidentally—

Mr. ROGERS. You did not get mad until the grand jury got into this picture, did you?

Mr. KLETTER. The grand jury got into it immediately after the newspaper stories broke, I believe.

Mr. ROGERS. Was not your company suspect by the grand jury, too?

Mr. KLETTER. Were they?

Mr. ROGERS. Were they suspect?

Mr. KLETTER. I don't know.

Mr. ROGERS. Were you called before the grand jury?

Mr. KLETTER. We were not subpoenaed. We appeared before them.

Mr. ROGERS. You were requested to appear?

Mr. KLETTER. Yes.

Mr. ROGERS. To find out whether or not you had anything to do with the program?

Mr. KLETTER. That is correct, sir.

Mr. ROGERS. You contended to them that you did not have and did not know anything about it?

Mr. KLETTER. That is correct, sir.

Mr. ROGERS. And made no effort at all to control who was on the program or who was not? You made no effort to find out who was going to be on the program the next week or who was going to be dropped?

Mr. KLETTER. Thereafter?

Mr. ROGERS. No.

Mr. KLETTER. From inception, never

Mr. ROGERS. I believe that is all, Mr. Chairman.

Mr. FLYNT. Did I understand you correctly that you said it was important to you whether the producer paid the contestant the same amount the contestant was told on TV?

Mr. KLETTER. I am sorry, I didn't quite hear that.

Mr. FLYNT. When the counsel for the committee was asking you questions, in response to one of them you made some statement to the effect that you did not consider it important. I want to know if I got that in context and what you were saying was in effect: I did not consider it important whether the producer paid the contestant the same amount that the public was told on TV that he had been paid.

Mr. KLETTER. No; I did not say that.

Mr. FLYNT. Do you remember the line of questioning?

Mr. KLETTER. Yes.

Mr. FLYNT. Will you clear that up for me?

Mr. KLETTER. I think I know what you are referring to, and if I did say that, I was misunderstood—what I believe I did say, we didn't find it important if Barry & Enright, the producers, decided that they wanted to give the contestants an advance or a drawing against their winnings. This we found not important to us because it in no way affected us.

Mr. FLYNT. I think that came a little bit later in the line of questioning.

You were asked a question, I believe, by Mr. Lishman, as to whether or not you were informed of the amount of money that Mr. Jackman was paid, and I believe you said that your records would show it.

Mr. KLETTER. Would show it, yes.

Mr. FLYNT. You said you followed the program very carefully?

Mr. KLETTER. Yes, sir.

Mr. FLYNT. The program indicated that he was paid \$24,500.

Mr. KLETTER. As far as I was concerned at that time, I believed he was paid \$24,500.

Mr. FLYNT. Do you still have those records?

Mr. KLETTER. Yes.

Mr. FLYNT. Will you supply for the committee the amount that the records show that Mr. Jackman was paid?

Mr. KLETTER. Right.

(NOTE.—Mr. Schultz, counsel for the company, later in this hearing, informed the subcommittee that the amount paid to Mr. Jackman from company funds was \$15,000.)

Mr. FLYNT. The second question that I want to clear up is the statement——

Mr. KLETTER. I understand, incidentally, that subsequently Mr. Jackman was paid the balance.

Mr. FLYNT. I mean at the initial time.

Mr. KLETTER. He was paid the initial \$9,400 subsequently by suing Barry & Enright for it.

Mr. FLYNT. That is the first we have heard about that.

Mr. KLETTER. That is what I understood.

Mr. FLYNT. That is the first we heard about that. Who told you that?

Mr. KLETTER. I think it came out in the testimony of the grand jury by someone.

Mr. FLYNT. To sort of refresh your memory on that, because I have no knowledge on my own part of whatever came out in the grand jury testimony. It may have. I don't know if it did. Where did you get the information on it? From the grand jury?

Mr. KLETTER. Of course not.

Mr. FLYNT. Somebody who appeared before the grand jury?

Mr. KLETTER. Yes.

Mr. FLYNT. That he did bring suit for the additional amount?

Mr. KLETTER. That they finally paid him the additional \$9,400. Either he sued for it or asked for it or whatever it may have been; he was paid it.

Mr. FLYNT. Do you recall who told you that?

Mr. KLETTER. I honestly don't know.

Mr. FLYNT. If you can refresh your memory, will you supply it?

Mr. KLETTER. I sure will.

Mr. FLYNT. You said you did not consider any difference between the advancement of prize money and the advancement of salary?

Mr. KLETTER. That is correct, sir.

Mr. FLYNT. Salary is something that is earned, is it not?

Mr. KLETTER. Yes.

Mr. FLYNT. Prize money is something that may or may not be earned, depending on whether or not a question is answered correctly?

Mr. KLETTER. That is correct.

Mr. FLYNT. One of the witnesses, I believe, testified that at least some of these contestants had a possibility of losing the entire amount that they accumulated. In view of that, you consider that they were earning this money by their appearance on the program rather than as a reward for successful answering of questions?

Mr. KLETTER. That is correct.

Mr. FLYNT. So they were not on there on the basis, according to your statement, of what you might call contestants but as what you might call quasi-salaried employees?

Mr. KLETTER. No, then I misunderstood your question.

You mean that they had made arrangements with contestants and paid them?

Mr. FLYNT. No, you did not say that. I did not say that you said that.

You said you saw no difference between the advancing of prize money and the advancing of salary. Do you want to stand on that statement?

Mr. KLETTER. Yes. Because realistically, again I say, as I see it, no real wrong was done nor was anyone harmed. If a Mr. Van Doren or a Mr. X had won a certain amount of money at a certain time and wanted an advance or wanted some money in advance to draw as against his potential winnings. Let us assume that he had lost it all. It is my firm belief that if Mr. Van Doren had lost it all, he would have returned the money that was advanced to him.

This is my belief and my feeling as a human being. You just don't turn somebody down if he has a good reason for asking for help.

Mr. FLYNT. Do you know whether or not they took a note from him on that advance?

Mr. KLETTER. I do not know.

Mr. FLYNT. The reason I am asking that is a question of good business practices.

Mr. KLETTER. Yes.

Mr. FLYNT. Does your company make advances on salaries?

Mr. KLETTER. We do occasionally; yes, sir. Depending upon circumstances. Sometimes substantial.

Mr. FLYNT. Does that sort of set a precedent in the employer-employee relationship?

The reason I ask that, I am not trying to be facetious, I am asking on the question of business practices.

Mr. KLETTER. I understand that.

Mr. FLYNT. It might set a precedent.

My information is that corporations by and large have a set rule—unless it is a closely held corporation.

Mr. KLETTER. Which we are.

Mr. FLYNT. They say go to the bank and if necessary we will make an assignment of your salary when it comes due. Does your company make loans based on future salary?

Mr. KLETTER. Yes, we do. In deserving cases when the need is great, we do. We do it substantially sometimes.

Mr. FLYNT. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Moss.

Mr. Moss. Mr. Kletter, as I understand, at the time the contract was negotiated with Barry & Enright, you were with Kletter Associates acting as the agency for Pharmaceuticals, Inc.

Mr. KLETTER. That is right.

Mr. Moss. You were president of Kletter Associates?

Mr. KLETTER. That is correct, sir.

Mr. Moss. At that time were you also vice president of Pharmaceuticals, Inc.?

Mr. KLETTER. No, I was not.

Mr. MOSS. Were you at that time associated in any capacity with Pharmaceuticals, Inc.?

Mr. KLETTER. Not directly, sir; no.

Mr. MOSS. This was in 1956.

Mr. KLETTER. Beg pardon?

Mr. MOSS. This was in 1956.

Mr. KLETTER. No. This was in 1953.

Mr. MOSS. That you made your first contract for "Twenty-one"?

Mr. KLETTER. No, no; I am sorry. That was in 1956.

I thought you meant my original arrangement with Pharmaceuticals personally.

Mr. MOSS. I am only interested in this particular program.

Mr. KLETTER. That is correct, May of 1956.

Mr. MOSS. Were you at that time with Kletter Associates?

Mr. KLETTER. That is correct.

Mr. MOSS. Were you also associated with Pharmaceuticals, Inc.?

Mr. KLETTER. As the agency for Pharmaceuticals; yes, sir.

Mr. MOSS. That would be in the status of a client?

Mr. KLETTER. Beg your pardon?

Mr. MOSS. Pharmaceuticals, Inc., at that time were a client of yours?

Mr. KLETTER. They were my client at that time.

Mr. MOSS. Or an account?

Mr. KLETTER. That is right.

Mr. MOSS. But you were not at that time an officer or employee of Pharmaceuticals?

Mr. KLETTER. Of Pharmaceuticals; no, sir.

Mr. MOSS. When did you become an officer of Pharmaceuticals, Inc.?

Mr. KLETTER. In 1957. October 1957.

Mr. MOSS. The year after this contract was negotiated?

Mr. KLETTER. That is correct, sir.

Mr. MOSS. In the negotiating of the contract, in arriving at the figure for the prize money payment, what steps were taken to satisfy you that that would in fact be sufficient to underwrite the cost of prizes? It was not an arbitrary figure, was it?

Was it carefully computed?

Mr. KLETTER. As far as we were concerned, we were merely told that the prize moneys for the program would require a budget of \$10,000, which could be a little more or a little less than actually required.

Mr. MOSS. But only less to you under the conditions of the contract?

Mr. KLETTER. That is correct, sir. And that they had—by they, I mean the producers of the program or the packagers—computed this by some mathematical formula of their own that really did not concern us.

Mr. MOSS. You did not review their computation?

Mr. KLETTER. No. There was no need of it.

Mr. MOSS. Of course, that becomes a matter of judgment. It goes to a couple of other points.

Was this a noncancelable contract?

Mr. KLETTER. No. The contract was cancelable.

Mr. Moss. It had certain periods in which you could terminate the contract if you desired?

Mr. KLETTER. That is correct.

The first 26 weeks were firm and thereafter each 13 weeks.

Mr. Moss. These were the periods which coincided with the accounting for the prize money?

Mr. KLETTER. That is correct, sir.

Mr. Moss. Now, on the matter of advances, were your approvals to these advances given in any form other than verbally?

Mr. KLETTER. Verbal only.

Mr. Moss. Only verbal?

Mr. KLETTER. Yes, sir.

Mr. Moss. It was very clearly stated that you assumed no responsibility as a result of any liability which might have been incurred by Barry & Enright in making the advances, or did you share a liability?

Mr. KLETTER. No. There was no liability on our part at all.

Incidentally, they were not really approvals.

This was not a question, will you let me do this or not. It was merely, I think, a courtesy call more than anything else to me to tell me of the problem, and that this is what they are going to do. I saw no reason to check for doing it. It was not a question, can I get your approval to do this or do you disapprove. It was merely a conversation or statement of fact that they intended to do, to which we have no objections.

Mr. Moss. Now your first period of accounting came 26 weeks following the first program?

Mr. KLETTER. That is correct.

Mr. Moss. The first program was?

Mr. KLETTER. October 12, 1956.

Mr. Moss. November 1956?

Mr. KLETTER. October 1956.

Mr. Moss. October 12, 1956?

Mr. KLETTER. That is right.

Mr. Moss. Then the Jackman case would not come within that period of accountability; is that correct? Nor did it?

Mr. KLETTER. I don't know. I don't remember when Mr. Jackman appeared, the exact date.

Mr. Moss. As a result of the subsequent developments, have you ever felt sufficiently interested in the possibility to check back on the reports or the records?

Mr. KLETTER. Oh, yes. At the end of the first 26-week period, and I cannot give you exact amounts: I do know at the end of the 26-week period they were in arrears. In other words. Barry & Enright had awarded prizes beyond the \$10,000 a week.

Mr. Moss. Do you recall whether the Jackman payment was part of the account rendered to you?

Mr. KLETTER. I would have to check my records.

Mr. Moss. You have never checked that fact?

Mr. KLETTER. Beg pardon?

It is a fact, Mr. Schults says.

Mr. Moss. It is a fact of this rendering to you?

Mr. SCHULTS. Since I have been quoted, sir, may I say that once the incident was called to our attention in 1958, we checked our records and found that we had been billed for \$15,000.

Mr. MOSS. In other words, the billing was for \$15,000?

Mr. SCHULTS. That is right.

Mr. MOSS. And not for \$24,500?

Mr. SCHULTS. That is right.

Mr. MOSS. Then, having heard the charge that the \$9,400 additional was paid, did you ever check to make that determination? Or the rumor that it was paid.

Mr. SCHULTS. May I continue to answer that because I was the one that was told by Mr. Enright in a conference in my office as counsel for the company about the Jackman incident. We checked and found that we had only been billed for the amount allegedly paid, \$15,000. It was during that conversation that Mr. Enright reported to me that subsequent to the \$15,000 payment, a lawsuit had been instigated by Mr. Jackman against Barry & Enright to recover the balance of \$9,400.

I have no knowledge as to the outcome of that lawsuit.

Mr. MOSS. Then you have no record indicating that it was paid and charged against the prize money for which accounting had to be made to you?

Mr. KLETTER. No.

Mr. MOSS. On these accountings, how was the Nearing payment handled? Was it handled as a \$10,000 or a \$5,500 payment?

Mr. KLETTER. I think it was \$10,000.

Mr. MOSS. Your contract with Barry & Enright; did it call for actual payment of prize moneys or actual entitlement to payment for prize moneys?

Mr. KLETTER. Again I would like to state this. We did not pay weekly based upon actual winnings.

Mr. MOSS. I am talking of the period of accountability. If there was an irregular payment in there, you would certainly not allow it unless covered by your contract.

Mr. KLETTER. That is correct.

Mr. MOSS. Then did you contract require you to honor payments actually made or entitlements to payment?

Mr. KLETTER. Correct; entitlements to payment.

Mr. MOSS. If the Nearing was rendered at \$10,000, you were overcharged \$4,500?

Mr. KLETTER. And we would have so gotten reimbursed for it.

Mr. MOSS. You would have disallowed that from the accounting?

Mr. KLETTER. Yes, sir.

Mr. MOSS. You read in the newspapers in August 1958 stories indicating that charges had been made of fixing on "Twenty-one"?

Mr. KLETTER. Yes, sir.

Mr. MOSS. When were you first contacted either by the district attorney or by the grand jury?

Mr. KLETTER. I don't recall.

Mr. MOSS. Was it in August, September, or was it in 1959? Was it 1958?

Mr. KLETTER. It was in 1959, I believe.

Mr. MOSS. You indicated that the mere circulation or repeating of the charges did not convince you as to their truthfulness.

Mr. KLETTER. No. We canceled, incidentally, the program in October of 1958, 1959. No, 1958.

Mr. MOSS. I think you said that the cancellation was a negotiated termination for which you received certain consideration from NBC?

Mr. KLETTER. Beg pardon?

Mr. MOSS. I think you indicated earlier in testimony that was a negotiated termination of your sponsorship?

Mr. KLETTER. Well, no. It was an agreed upon termination of our sponsorship.

Mr. MOSS. You indicated in response to a question as to whether or not there was any payment made as the result of that termination that you received certain concessions.

Mr. KLETTER. Oh, no. There were no considerations for termination.

Mr. MOSS. Of any type?

Mr. KLETTER. No, sir.

Mr. MOSS. You terminated at the end of a report period which was your entitlement under the contract?

Mr. KLETTER. No. We terminated prior to our rightful termination period because of the circumstances that later developed in connection with the program.

Mr. MOSS. Then you terminated in October 1958.

Mr. KLETTER. That is right, sir.

Mr. MOSS. At the time of termination were you then convinced that the program had been in fact irregularly handled?

Mr. KLETTER. We terminated because of that.

Mr. MOSS. What information, charge, evidence, convinced you of that fact?

Mr. KLETTER. I think that is quite obvious. After all of the appearances by witnesses before the grand jury, my own appearances.

Mr. MOSS. But this is prior to your appearance before the grand jury. The grand jury was convened on September 18, 1958.

Mr. KLETTER. I am sorry. You are absolutely right, sir.

Mr. MOSS. So you became convinced of this fact prior to your appearance before the grand jury?

Mr. KLETTER. Yes.

Mr. SCHULTS. You say September?

Mr. MOSS. I am asking you for the information which led you to conclude that the charges were in fact true.

Mr. KLETTER. I think we are a bit confused as to the dates.

Mr. MOSS. You terminated in October?

Mr. KLETTER. We terminated October 1958. The articles appeared, I believe, some time in the latter part of August 1958. The grand jury investigation I honestly don't recall exactly when they commenced. It was September of 1958. Immediately thereafter. Immediately after the articles came out the grand jury investigations were brought about. I do believe—I am not sure of this now—that I may have appeared in Mr. Stone's office prior to our cancellation of this program.

Mr. MOSS. Your involvement then convinced you whether or not the charges were true, it would be better to get out of the contract?

Mr. KLETTER. Both that, and we began to suspect where there is smoke, there is fire.

Mr. MOSS. That is all of my questions, Mr. Chairman.

The CHAIRMAN. Mr. Kletter, did you ever insist in the contract that "Twenty-one" be an honest contest of knowledge?

Mr. KLETTER. Oh, yes. Insist on it!

The CHAIRMAN. Yes.

Mr. KLETTER. I think that is more or less an accepted fact, and the clauses of agreements for programs, morals, ethics, truth, et cetera, are part of contracts, and certainly this would have been a part of that clause even though it may not have so been spelled out.

The CHAIRMAN. After you dropped "Twenty-one," did you not sponsor another Barry & Enright production known as "Concentration"?

Mr. KLETTER. For 4 week, I believe, yes.

The CHAIRMAN. For a period of 4 weeks?

Mr. KLETTER. Yes, sir.

The CHAIRMAN. Your previous experience with the quiz show, "Twenty-one," did not raise any suspicion?

Mr. KLETTER. Of course, these were different type shows completely. There were no moneys involved in this thing. No big stakes involved. Frankly we were quite emotionally upset about this thing. There has been an emotional upheaval in our own organization, top level, when all of this happened. Frankly I think we did it out of the graciousness of our hearts at the time to let a substitute program of Barry & Enright go in its place. This might sound ludicrous but that is true.

The CHAIRMAN. At the end of the 13-week period, was there anything returned to you out of the accumulated winnings?

Mr. KLETTER. Actually, I think I testified before, at the conclusion of the last sponsorship of the program in October 1958, the total amount of prize moneys awarded was \$75,000 and some odd greater than we actually paid to the producers of the program. So obviously there was no refund to us.

The CHAIRMAN. Who stood for that \$75,000?

Mr. KLETTER. Barry & Enright or NBC or whoever was responsible for it at the time. I assume NBC since we were dealing with NBC at the conclusion of this program.

The CHAIRMAN. Just one final question. Could you give the committee approximately the percentage of the cost of manufacturing of Geritol that would be attributable to advertising cost?

Mr. KLETTER. The cost of advertising the product, the percentage that was spent for advertising?

The CHAIRMAN. Yes.

Mr. KLETTER. It ranges around 40 percent, which is common, incidentally, in the industry.

Mr. FLYNT. Mr. Kletter, you say that your company was responsible for the money to which the contestant was entitled, rather than the actual amount paid.

Mr. KLETTER. I don't follow the question.

Mr. FLYNT. In response to a question from Mr. Moss, I believe, you made the statement that Pharmaceuticals, Inc., was required to pay under the terms of the contract the amount to which the contestant was entitled.

Mr. KLETTER. No. Under the terms of our contract, Pharmaceuticals, Inc., was to pay to the producer \$10,000 per week for prize

moneys. There was no specific language that said we pay exact amounts paid to contestants, with the understanding, of course, that this \$10,000 per week cannot be exceeded, so far as our liability is concerned. If it is exceeded, it would be the producers' liability.

Mr. FLYNT. In the fall of 1956, when Mr. Jackman, according to the program, won \$24,500, and your records came through and showed that he was paid only \$15,000, didn't that make you a little bit suspicious?

Mr. KLETTER. Again I must admit that I did not see those records at the time. That was drawn to our attention later.

Mr. FLYNT. You did not see it when it came through?

Mr. KLETTER. No.

Mr. FLYNT. When was that first called to your attention?

Mr. KLETTER. As a matter of fact, I am not sure, and I would have to check records carefully and scrutinize them, whether \$15,000 came through as payment or \$24,500 came through as payment. I don't know.

Mr. FLYNT. Would you like to answer that, Mr. Schults?

Mr. SCHULTS. I wondered if you would be interested in the precise language of the agreement with respect to the prize money?

Mr. FLYNT. Yes, I would.

Mr. SCHULTS. With your permission I would like to read it into the record. After listing the program prices which varied in various contract years, the agreement goes on to say:

In addition to the foregoing sums, it is agreed that we will pay a maximum of \$10,000 per telecast for prize money averaged over the first two cycles and each cycle thereafter. In the event a sum less than \$260,000 is awarded during the first two cycles, or less than \$130,000 during any subsequent cycle thereafter, the savings shall be reimbursed to us.

The key word is "awarded."

Mr. FLYNT. Did you construe the word "award" the amount announced on television?

Mr. KLETTER. Yes.

Mr. FLYNT. Was the advance made to Mr. Van Doren?

Mr. KLETTER. Yes, sir.

Mr. FLYNT. Was that before or after the settlement was made with Mr. Jackman?

Mr. KLETTER. I don't know. I assume that was before. I am not sure which came first, Jackman or Van Doren.

Mr. FLYNT. I think the record will show that it was after. Let us assume it was after. Didn't those two circumstances cause your suspicions to be aroused a little bit that it might not be quite bona fide?

Mr. KLETTER. As I indicated before, I was not aware of the Jackman situation at all until just recently when all of this came to light.

Mr. FLYNT. But all of the figures were available to you.

Mr. KLETTER. They were. But as far as our records at the time, I believe, indicated, the amount that he had won was the amount that was reported to us as paid him.

Mr. FLYNT. When were you told or did you say that the additional \$9,500 was paid him?

Mr. KLETTER. I don't know that. I understand there was a demand made or a suit instituted. Whether it was paid him or not I cannot say.

Mr. FLYNT. Are you prepared now to say who told you that?

Mr. KLETTER. No. Mr. Schults is probably the one that told it to me because Mr. Enright told it to him.

Mr. FLYNT. Would you answer that, Mr. Schults?

Mr. SCHULTS. As I explained before, I was first told of the Jackman incident by Mr. Stone in a conference in his office during the early days.

Mr. FLYNT. Mr. Stone is the assistant district attorney?

Mr. SCHULTS. In the grand jury investigation, Mr. Stone being the district attorney in charge of the matter. When I heard about it, I sent for Mr. Enright and demanded an explanation. He gave me the one I presume has been given here which his version differed somewhat from the version I had listened to this morning of Mr. Jackman.

It was during that conference that Mr. Enright told me that after the \$15,000 had been paid to Mr. Jackman that sometime subsequently a law suit had been started to recover the balance of \$9,400. My recollection is that at the time I was told this, which must have been in September 1958, the impression I had was that the lawsuit was pending. I have no knowledge whether any payment has been made or any settlement arrived at.

Mr. Moss. I wanted to have clarified for the record the interpretation of the contract because Mr. Kletter in response to a very specific question from me indicated that it would have been proper to disallow any amount paid to Mrs. Nearing above \$5,500. Here, in fact, \$10,000 was paid. It would not be credited in an accounting for the period involved. It would be a disallowal of \$4,500 of that payment.

Mr. KLETTER. That is correct. At the conclusion, however, we were always in this position, where the prize moneys paid out were always greater than what we paid Barry & Enright. Therefore, it was of no significance to make issue of it.

Mr. FLYNT. You will furnish for the record the sheets furnished to you by Barry & Enright showing the amount paid to Mr. Jackman.

Mr. SCHULTS. They are in the hands of committee counsel now, sir.

The CHAIRMAN. They are in your hands now, Mr. Lishman. They were filed in the record this morning as checks.

Mr. FLYNT. I am talking about amounts paid to Mr. Jackman and the other contestants.

Mr. KLETTER. Yes. I believe all of that was furnished to the grand jury in New York.

Mr. FLYNT. And is available to us.

Mr. KLETTER. And is in their hands now.

(Photostatic copy of sheet showing amount paid to Mr. Jackman follows:)

Memo from . . . BARRY & ENRIGHT PRODUCTIONS, INC.

667 MADISON AVENUE . NEW YORK 21, N. Y.

DATE 11/11 1958

TO: Edward Klotter Associates
Time Health and Florence Steyda

SUBJECT: "TREKLY ONE" Police Memo

Show of 10/10/56
" " 10/31/56

\$15,000.00
100.00

GRAND JURY
EXHIBITS No. 42

JAN 27 1959

Mr. ROGERS. Mr. Kletter, to clear up one thing, you told the chairman that 40 percent of the cost of Geritol was spent for advertising, is that right?

Mr. KLETTER. Yes.

Mr. ROGERS. You are talking about the retail cost of it, are you not?

Mr. KLETTER. No, of our sales. Forty percent of our sales.

Mr. ROGERS. Your actual cost?

Mr. KLETTER. Not our cost; our sales.

Mr. ROGERS. Your sales. The sale price.

Mr. KLETTER. That is right. To our wholesalers, et cetera.

Mr. LISHMAN. Mr. Kletter, how many weeks did you have the program "Twenty-one"?

Mr. KLETTER. 105, I believe, is the total.

Mr. LISHMAN. Is it a fact that the average prize money paid out over that time was \$10,000 a week?

Mr. KLETTER. It was over that.

Mr. LISHMAN. Was it close to \$10,000 a week?

Mr. KLETTER. It was \$750 over that.

Mr. LISHMAN. In 104 weeks?

Mr. KLETTER. In 105 weeks. If you want the exact figure we have it.

Mr. LISHMAN. In other words, it might be a difference of five or six hundred dollars a week over a 105 weeks. Isn't that a rather amazing coincidence for a game of chance or skill, or whatever this was?

Mr. KLETTER. Oh, no. You must remember that didn't average \$750 a week. Some weeks it went \$40,000 over and there may have been weeks when there were no payments made at all.

Mr. LISHMAN. But it averaged out to a little over \$10,000 a week?

Mr. KLETTER. You asked me whether that is a coincidence. Was that your question?

Mr. LISHMAN. It averaged a little over \$10,000 a week, did it not?

Mr. KLETTER. That is correct. About \$750 over \$10,000 a week.

Mr. LISHMAN. Don't you think that is an amazing coincidence?

Mr. KLETTER. I really couldn't answer. I think a mathematician would have to be consulted.

Mr. LISHMAN. Wouldn't that indicate that there was some budgetary control exercised in the award of the prizes in the program?

Mr. KLETTER. If you are asking me whether I believe that in some instances these contestants were controlled based upon what I heard and saw and now know, I would say yes, there is some control.

The CHAIRMAN. Do you object to the photographers taking pictures of you?

Mr. KLETTER. I don't particularly like to have my picture taken.

The CHAIRMAN. If you don't object they want to do it.

Mr. KLETTER. I prefer not to. Thank you very much.

The CHAIRMAN. Thank you very much for your appearance.

Mr. KLETTER. Thank you, sir.

The CHAIRMAN. Mr. Thomas Ervin, will you be sworn, please.

Do you solemnly swear that the evidence you shall give before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ERVIN. I do.

**TESTIMONY OF THOMAS E. ERVIN, VICE PRESIDENT AND
GENERAL ATTORNEY, NATIONAL BROADCASTING CO.**

The CHAIRMAN. What is your name, please, for the record.

Mr. ERVIN. Thomas E. Ervin.

The CHAIRMAN. What is your address, Mr. Ervin?

Mr. ERVIN. 370 First Avenue, New York City.

The CHAIRMAN. What is your business or profession?

Mr. ERVIN. I am a lawyer. My present position is vice president and general attorney of the National Broadcasting Co. I have here a brief statement which was to have been presented by Mr. Walter Scott, the executive vice president of NBC in charge of the NBC television network. With the permission of the Chairman, I would like to read the statement for the record.

The CHAIRMAN. I might say that Mr. Scott did write me a letter to the effect that he would appear as a representative of the National Broadcasting Co.

Mr. ERVIN. Mr. Scott unfortunately is convalescing from a recent operation and is physically unable to be here today.

The CHAIRMAN. You are here in his stead?

Mr. ERVIN. That is right, sir.

The CHAIRMAN. You are vice president and general counsel of the company?

Mr. ERVIN. General attorney is the title, sir.

The CHAIRMAN. Very well. You may read the statement.

Mr. ERVIN (reading):

The National Broadcasting Co. regards rigging of television quiz shows as a breach of public faith and a blight on a program type that otherwise can be both entertaining and instructive. No such practice can be justified and none has ever been condoned by NBC. If and when rigging in any form exists, it should be given full public exposure—and, with this aim in mind, NBC has cooperated fully with all public investigations of quiz programs, including those of the New York district attorney and grand jury and the House Subcommittee on Legislative Oversight.

When charges against the program "Twenty-one" were first made public last fall, its producers, Barry & Enright, gave NBC written and verbal assurance that these charges were without foundation. Nevertheless, NBC took prompt action to relieve Barry & Enright of any control over these programs pending the outcome of the investigation. Direct production responsibility of all Barry & Enright programs on NBC was thereafter assumed by the network.

In addition, security procedures on all quiz programs were reviewed. As a further safeguard, an outside organization was asked to make an independent review of these procedures and recommend any new steps which might additionally safeguard the integrity of the programs. This organization, Arthur Young & Co., found security arrangements on all six NBC quiz shows to be in good order but also developed new recommendations concerning security procedures on the quiz programs.

At the request of the New York district attorney, NBC refrained from its own interrogation of quiz show contestants. Throughout the district attorney's investigation, NBC furnished all information requested. After the grand jury's presentment had been sealed, a public controversy arose over the propriety of releasing the presentment. NBC felt that public disclosure of the grand jury's findings would throw valuable light on the truth or falsity of the various charges made against quiz programs, and it therefore publicly urged that the presentment be unsealed if the court found such action legally permissible.

In the same spirit, NBC has worked with the Special Subcommittee on Legislative Oversight in furnishing all requested documents, including the Arthur Young report, and in assisting the subcommittee to locate witnesses it wished to question. NBC believes that the subcommittee is performing a vital public service in undertaking to develop and place before the American public the true facts concerning those quiz shows whose conduct is under question.

That is the end of the statement.

The CHAIRMAN. Do you care to make a further statement of your own, Mr. Ervin?

Mr. ERVIN. No, Mr. Chairman. But I would be glad to answer any questions that the members of the committee and the staff would like to ask. There has been considerable testimony today in which my name has been mentioned, and I would like to answer questions very much on that score.

The CHAIRMAN. In view of the fact NBC and your name has been brought in, I thought I would give you an opportunity to make any further statement you wished.

Mr. ERVIN. If the counsel is prepared to ask questions, I would prefer to do it by that method.

The CHAIRMAN. Mr. Lishman.

Mr. LISHMAN. Mr. Ervin, I would say with respect to the last paragraph of the statement that it is perfectly in accord with what actually happened. NBC has cooperated with the staff members of the subcommittee and has furnished a great deal of information in a very cooperative manner.

Now, I would like to ask you, is it true that about a year before the Stempel charges broke into the press that NBC representatives had a meeting with Mr. Enright and Mr. Franklin and Mr. Davis of the Barry & Enright firm?

Mr. ERVIN. Yes; it is. Those charges came to my attention in September of 1957.

Mr. LISHMAN. Who were the representatives of NBC present at this first meeting?

Mr. ERVIN. Mr. Eiges and Mr. Ellis Moore.

Mr. LISHMAN. Do you have any knowledge or record of what transpired at that meeting?

Mr. ERVIN. I have a report from Mr. Eiges as to what transpired at the meeting. There were no notes kept and no other record. As a matter of fact, Mr. Eiges advised me of the meeting shortly after it occurred. He told me—

Mr. LISHMAN. Is that a written report?

Mr. ERVIN. No; that was an oral report.

Mr. LISHMAN. So that there are no written reports of that meeting?

Mr. ERVIN. There are none.

Mr. LISHMAN. What did Mr. Eiges report to you?

Mr. ERVIN. Mr. Eiges reported to me that Dan Enright and several representatives of their publicity firm had informed them that the Journal American was preparing to publish a story, based on charges of a man named Stempel, that Stempel had received questions and answers in advance on the "Twenty-one" program. Mr. Enright had assured him that these charges were false, that he was in a position to prove that they were false. He had a written statement from Mr. Stempel admitting the falsity of the charges.

The CHAIRMAN. Who was that that had that information?

Mr. ERVIN. Mr. Enright. That they were interested in two things, they wanted to see whether or not the true story, the true facts as to Stempel's charges could not be made available to the Journal American, and they were interested as to whether NBC would consider joining Barry & Enright in a libel action against the newspaper if these charges were published.

It was because of this latter aspect of the conference that Mr. Eiges immediately called me and informed me of it.

Mr. LISHMAN. Mr. Ervin, are you aware of the fact that two witnesses have testified before the subcommittee, Mr. Davis and Mr. Franklin, who were also present at this meeting in 1957 prior to the breaking of the Stempel story in the newspapers, and that each of those witnesses testified in effect that Mr. Enright was not asked at that meeting by anyone whether the Stempel charges were true or false.

Mr. ERVIN. I heard Mr. Franklin's testimony and I was informed of Mr. Davis' testimony.

Mr. LISHMAN. But according to the report Mr. Eiges made to you—

Mr. ERVIN. Eiges' report to me was to the effect that Mr. Enright stated flatly that these charges were untrue and that he had evidence in his possession to establish it.

Mr. LISHMAN. Did he show that evidence to any of the NBC representatives?

Mr. ERVIN. He did not. I immediately called Ervin Cohen, an attorney, who represents Mr. Enright, and I suggested to him that he come to my office with Mr. Enright to discuss the situation. That discussion took place on a Friday morning which I have verified from other records to have taken place on September 20, 1957.

Mr. LISHMAN. Was this meeting after May 2, 1957?

Mr. ERVIN. It was on September 20, 1957.

Mr. LISHMAN. And on May 2, 1957, as I understand, NBC bought the property from Barry & Enright, is that correct?

Mr. ERVIN. That is correct.

Mr. LISHMAN. How much?

Mr. ERVIN. The purchase price was \$2.2 million.

Mr. LISHMAN. Were there some pluses in addition? I have a copy of the contract before me. Who is Mr. Eiges?

Mr. ERVIN. Mr. Sydney Eiges is a vice president of NBC in charge of press.

Mr. LISHMAN. Who is Mr. Moore?

Mr. ERVIN. Mr. Moore is an employee of NBC who works for Mr. Eiges.

(Document handed to witness.)

Mr. ERVIN. Mr. Lishman has shown me a paragraph of the contract which refers to certain profit-sharing arrangements which were a part of the transaction. The purchase from Barry & Enright was a purchase of all the assets of a corporation which was then known as Barry & Enright Productions, Inc. It included a great many programs, not just the program "Twenty-one." It included many of the programs which Barry & Enright had been very successful with in earlier years, such as "Life Begins at 80," "Juvenile Jury," "Hi-Lo." and others.

It was provided in the contract that after NBC had recouped from its sale of the properties all of the basic purchase price which was approximately \$2.2 million there would then be a sharing of profits on a 50-50 basis with Barry & Enright. The paragraph which you have shown me established what we called the crossover hurdle to determine when we had recouped through to the point of view of profit sharing.

Mr. LISHMAN. Mr. Ervin, after this meeting, attended by Mr. Eiges and Mr. Moore for NBC, and Mr. Enright and Mr. Davis and Mr. Franklin for Barry & Enright, did the NBC conduct an investigation to ascertain whether or not the Stempel charges were true?

Mr. ERVIN. As I told you, I immediately called Irving Cohen and arranged for this conference with Mr. Cohen, Mr. Enright. A lawyer on my staff named Ben Raub also attended the meeting. Mr. Enright gave me a detailed account of Mr. Stempel's charges against him. He said that Mr. Stempel has been under psychiatric treatment after appearing on the program; that he had made these charges to several people; that he had come to Mr. Enright's office and Mr. Enright had told him that he would be unable to discuss the matter with him or to help him at all unless he, Stempel, agreed with Mr. Enright that these charges were false and withdrew them.

Mr. Stempel made a written statement to that effect and gave it to Mr. Enright. Mr. Enright also said that this conversation which he had with Mr. Stempel took place for a considerable period of time; that he had a tape recorder in his office and had recorded on tape the entire conversation; that in the course of this conversation Mr. Stempel admitted the charges were false and apologized for having made them. He said the tape recording itself, a transcript of it or the written statement were available in his office for my inspection at any time. He also related certain additional details as to the Stempel charges, all of which I do not remember at this time. The meeting lasted, as I recall it, all of Friday morning.

Mr. LISHMAN. Going back to the meeting that preceded your meeting with the attorney and Mr. Enright, the witnesses before the subcommittee, Davis and Franklin, have testified that at that meeting, which was attended by Mr. Eiges and Moore, and on which you have this oral report from Mr. Eiges, that the meeting concluded with the result that every one present would sit tight and play the situation by ear.

Did the oral report that Mr. Eiges made to you contain any such inclusion?

Mr. ERVIN. Mr. Eiges made no such report to me and I would be very much surprised if the statement had been made to that effect at the meeting because several things did take place. One was my meeting with Mr. Cohen and Mr. Enright. Another was Mr. Eiges telephoned the Journal-American and said we understand that you are planning to run a series of articles based on charges of a man named Stempel. We would appreciate it if you would come and talk to us about those charges before you publish the story because we think there is another side of the story. We have some information we think you ought to have.

Mr. LISHMAN. Did any representative of NBC at any time contact Mr. Stempel and ask him concerning the truth of his charges?

Mr. ERVIN. No. The meeting that I held with Mr. Cohen I have not completed the full story on if you would like to hear the rest of it.

Mr. LISHMAN. I would like to hear the rest of that; yes, sir.

Mr. ERVIN. Mr. Cohen as attorney for Barry & Enright then discussed with me the possibilities of bringing a libel action in the event that this story was published. I told him that I would like to consider that further and that we would discuss the matter again the

following week since we both had other things to do that afternoon. On Monday morning Mr. Eiges called me——

Mr. LISHMAN. Monday morning of what month?

Mr. ERVIN. Monday morning following Friday, September 20, Mr. Eiges called me and said that he had been informed by the Journal American that they had concluded not to publish the story. I assumed from that report that the Journal American had concluded that there was not sufficient evidence to back up the charges of Mr. Stempel. I did nothing further to investigate the charges after that day.

Mr. LISHMAN. Did any one else in NBC do anything further after that date to investigate these charges?

Mr. ERVIN. Not at that time.

Mr. LISHMAN. Then there came a time, did there not, when the Stempel story broke in the newspapers?

Mr. ERVIN. That was about a year later on August 28, 1958.

Mr. LISHMAN. On the evening of August 28, did you attend a meeting attended by Mr. Enright and by others of the Barry & Enright organization to discuss that situation?

Mr. ERVIN. I did.

Mr. LISHMAN. Can you state what discussion was had at that meeting?

Mr. ERVIN. As I recall the meeting, Mr. Bilby, vice president in charge of public relations for NBC, was present, Dan Enright, Mr. Franklin, Mr. Davis, Mr. Eiges, and Irving Cohen, the attorney for Daniel Enright, who attended the meeting in my office. The subject under discussion at the meeting was the issuance of a press release because of the story that had been published in the World-Telegram that day. The story was the story of the Stempel charges. As I recall, Mr. Franklin was very insistent that what we should do, that is, what Mr. Enright should do—not what NBC should do—was to release to the public immediately the written statement from Stempel, signed by Stempel, that these charges were untrue. That the tape recording should also be released to the public, and that this would be the best refutation of the Stempel charges which were untrue. I told the meeting that the district attorney was investigating quiz programs. That I thought that a date should be made with the district attorney immediately and that this evidence on the Stempel charges, including the tape recording and the statement, should be turned over to the district attorney at once. That there should be no publicity released as to its existence, and that I felt this was very important.

I offered to call Mr. McKay, who was a partner of our outside counsel of Cahill, Gordon, Roundoh & Ohl, an old firm—Mr. McKay is sitting next to me, incidentally—to set up an appointment with the district attorney that evening, if possible, and if not, the first thing Friday morning. That step was agreed to. I telephoned Mr. McKay. While Mr. McKay was trying to set up the appointment we worked on the text of the release. Mr. Cohen announced that he had been instructed by his clients, that is, Barry & Enright, to file immediately a libel suit against the World Telegram and asked that we join the suit. I said that NBC was not prepared to join in the libel suit at that time; that we felt we should turn this material over to the district attorney first; and that there was plenty of time to consider what type of private action to take later on. As a result of that meeting the

press release, the text of which has been read, was written by NBC people, approved by me, and issued.

Mr. LISHMAN. You said a police investigation had been made.

The CHAIRMAN. Pardon me right there, Mr. Lishman.

Mr. ERVIN, may I ask if Mr. Franklin was present at that meeting you have just described?

Mr. ERVIN. He was.

Mr. LISHMAN. And Mr. Davis?

Mr. ERVIN. Mr. Davis.

Mr. LISHMAN. And Mr. Eiges?

Mr. ERVIN. Mr. Eiges.

Mr. LISHMAN. And Mr. Moore?

Mr. ERVIN. No; Mr. Moore was not present.

Mr. LISHMAN. Mr. Bilby?

Mr. ERVIN. Mr. Bilby.

Mr. LISHMAN. What was the thorough investigation that NBC had completed that is referred to in that press release?

Mr. ERVIN. Incidentally, I have a copy of the press release here in its original text if you would like to have it.

Mr. LISHMAN. Yes, sir; we would. We have an extract from it.

Mr. ERVIN. I think the word "thorough" in connection with the investigation is not used with respect to the one we made.

Mr. LISHMAN. What was this investigation?

Mr. ERVIN. The investigation that was made was the 2- to 3-hour conference I had with Mr. Enright and his attorney in my office, in which he outlined in detail to me the evidence which he had to the effect that Stempel had withdrawn these charges, had admitted they were false, both in a written statement and in a recording of a long conversation.

Mr. Enright was a person with whom we had done business for many years. He had an excellent reputation in the business. In all the dealings I had had with him, I considered him a thoroughly honorable person. I believed completely his story at that time.

Mr. LISHMAN. But at no time from September 20, 1957, down to the time when the grand jury began its investigations NBC did contact any contestant or any person in this investigation other than Mr. Enright and his attorney, is that correct?

Mr. ERVIN. We did not contact any contestants at all in that period.

Mr. LISHMAN. What persons other than Mr. Enright and his lawyer did NBC question with regard to this question?

Mr. ERVIN. With regard to the Stempel charges in 1957, no other person.

When the district attorney announced his investigation, we immediately urged, as I said at this meeting, that this evidence be turned over to him at once. Mr. McKay set up an appointment with Mr. Stone of the district attorney's office.

The appointment was the Friday morning following our meeting. Mr. McKay, Mr. Franklin, Mr. Enright, Mr. Irving Cohen, appeared in the district attorney's office, turned over to them the written statement from Mr. Stempel in which he withdrew his charges, the tape recording of the conference, and I have been advised by Mr. McKay that Mr. Franklin at that meeting in the district attorney's office

several times stated very flatly that the Stempel charges were untrue and it was perfectly plain that the recording and the written statement established that fact.

Mr. LISHMAN. Are you aware that Mr. Franklin has testified to the contrary here today?

Mr. ERVIN. I heard Mr. Franklin's testimony.

Mr. LISHMAN. You contradict his testimony?

Mr. ERVIN. I do.

Mr. LISHMAN. Did you hear Mr. Franklin make this contrary statement in the district attorney's office?

Mr. ERVIN. I did not. My recollection as to Mr. Franklin's statement as to the same effect goes back to the meeting in the evening before in Mr. Bilby's office.

Mr. LISHMAN. What did Mr. Franklin say in Mr. Bilby's office?

Mr. ERVIN. Mr. Franklin's position in Mr. Bilby's office was that the written statement of Mr. Stempel and the complete text of the tape recording established completely that Mr. Stempel was unstable, that his charges were untrue, and that as a public relations man he felt the best thing to do was to issue these publicly at once.

Mr. LISHMAN. Are you aware that Mr. Franklin testified that the main thing you were concerned with was not in ascertaining the truth or falsity of Stempel's charges, but how to handle the impact they would make in the public press?

Mr. ERVIN. I heard Mr. Franklin's testimony to that effect, a report of Mr. Davis's testimony was made to me. That was not our concern at all.

Mr. LISHMAN. When the Snodgrass incident came to the attention of NBC, what did it do?

Mr. ERVIN. In late September 1958—and by this time I believe the grand jury had been convened—there appeared a story in the newspaper by Mr. Snodgrass to the effect that he had been given questions and answers on "Twenty-one" and that he had mailed the answers to himself, substantially the testimony which this committee has heard. This was the first occasion upon which we had any notice at all of Mr. Snodgrass' charges.

I immediately called Mr. Cohen and told him that this was a most serious development, that we wanted from them at once a complete statement as to what dealings anybody at Barry & Enright had had with Mr. Snodgrass, and a statement under oath as to whether or not these charges were true.

We received a letter from Mr. Enright, followed up by nine affidavits, copies of which I have here, affidavits from Mr. Barry, Mr. Enright, Mr. Freeman, four other members of the staff, all of these affidavits have flat statements in them that at no time did affiant give any questions or answers to Mr. Snodgrass.

We also convened a series of meetings at NBC what additional steps should be taken, since this was a second charge involving "Twenty-one," and we came to the conclusion that we would have to take over production responsibility for all of the Barry & Enright programs.

We approached Barry & Enright as to this. As a result, an agreement with Barry & Enright was arrived at under which they were removed—under which Mr. Enright was removed—as executive pro-

ducer of the programs, and we assumed direct production control of all of them.

I believe that agreement was reached within 3 days of the Snodgrass charges. From that time on, the production of the programs originally obtained from Barry & Enright have been conducted under the direct supervision of NBC personnel.

MR. LISHMAN. Mr. Ervin, in the light of the testimony that has been received by the subcommittee, do you today still believe that the Stempel and Snodgrass charges are untrue?

MR. ERVIN. Mr. Lishman, the testimony which I have read in transcript form indicates to me that the charges have considerable foundation. The only reason I say "indicate" is that this committee has not heard the balance of the testimony. If the balance of the testimony is the same as the testimony now in the record, there is no doubt in my mind that these charges are true.

If that is so, I think that we have been very badly deceived by Mr. Enright, who has given us repeated written and verbal assurances as to the honesty and integrity of this program.

THE CHAIRMAN. Did you say that he had given you repeated written and verbal statements?

MR. ERVIN. I have some of them here, Mr. Chairman.

THE CHAIRMAN. Will you provide the committee with such written statements as you have?

MR. ERVIN. I will be glad to.

We have already provided the affidavits on the Snodgrass charges. I will give them copies of the other statements.

I might read a sentence or two from one of them, which is typical. This is a statement Jack Barry made on the "Twenty-one" program. He made this on September 8, 1958. He insisted that he be permitted to make a statement on the program and Pharmaceuticals asked us if we would consent. We did. The statement reads:

This is Jack Barry. Before the program starts there is something I must say to all of you. I am talking about the stories that you have read attacking my partner, Dan Enright, and me. All I want to say is this:

The stories are wholly untrue. I repeat, they are wholly untrue. At no time has any contestant ever been given advance information about any questions ever used on this program. It has been a terrible experience to have to combat the unfounded charges that have been flying at us, but we do consider ourselves lucky in any respect. So many of you have expressed your faith in us and in our program. A wise man once said the truth will win out. I know that it will for we have not betrayed your trust in us. We never will.

MR. LISHMAN. Mr. Ervin, are you familiar with the controls that NBC exercised over the program to insure that the public would not be deceived in a quiz program at the time when you first undertook to broadcast the "Twenty-one" program?

MR. ERVIN. In 1956?

MR. LISHMAN. Yes.

MR. ERVIN. The program before it went on the air was screened by our continuity acceptance personnel. We had in the studio each time the program went on the air a representative of NBC, a man known as the unit manager. While his responsibilities were primarily business responsibilities, he was also to report any untoward incidents that occurred on the program. He never reported any such incidents at all.

In our investigations, when the charges were made public, we inter-

viewed all of these men and we could find nothing to substantiate any of the stories at that time.

Mr. LISHMAN. After the September 1957 meeting, did NBC undertake to make any changes in the controls that were exercised to insure the freedom from deception of what was going out on the airwaves on that quiz show?

Mr. ERVIN. I think we continued to exercise the same controls. We made no change after the September 20 meeting.

Mr. LISHMAN. Did you make any effort to see that the contestants were not being assisted in their answers to the questions?

Mr. ERVIN. We did not believe that contestants were being assisted. We had no reason to suspect they were.

Mr. LISHMAN. You had the charges of Stempel at that time?

Mr. ERVIN. We were convinced, or I was convinced, that the charges of Stempel were not true.

Mr. LISHMAN. After the story broke in the newspapers, did NBC then undertake—

Mr. ERVIN. Yes; we did.

Mr. LISHMAN (continuing). To revise its method of control? What did you do then?

Mr. ERVIN. The first steps that we took in August of 1958 were started as a result of the "Dotto" exposures in the newspaper. I assigned an attorney on my staff, a man named Edward Burns, who had had FBI experience, to go around and talk to all of the NBC unit managers on all of the quiz programs then being broadcast, not just the Barry & Enright shows, to make a detailed and thorough study of the security procedures, the number of people who knew questions in advance, the ways in which the program ran, and to discuss with all the working NBC people in the program whether or not any untoward incidents had happened, whether they thought there was any kind of coaching of contestants or rigging going on.

This investigation took 3 or 4 weeks. At about the conclusion of it, the Snodgrass charges were made public, and we decided we were going to have to take direct steps with respect to the Barry & Enright programs, which we did, and which I have talked to you about.

I also called Mr. McKay at that time and said there is a sharp issue of fact here. We must find out what the truth is. We can go no further without talking directly to these contestants, particularly Mr. Snodgrass. I would like to talk to him now, but I don't want to interfere with the district attorney's investigation.

Mr. McKay went to the district attorney and talked to them, explained our problem. The district attorney's office said that there had been many people trying to talk to these contestants, it was interfering with his own investigation, and, while he could not tell us what conduct we should follow, he would appreciate it if we did not directly interview these contestants and wait for the conclusion of his own investigation.

We decided that this was a proper and appropriate course of action. We did not make any effort from then on to determine through interviews with contestants what had happened before the investigation began. Instead, we bent all our energies to see whether we could develop a security system and a procedure to prevent this thing from happening in the future.

Mr. LISHMAN. Have you any reason to suspect, Mr. Ervin, that the same practices are being continued on TV shows today?

Mr. ERVIN. I have no reason to suspect it, but I must say that it is a very difficult problem from the point of view of supervision.

I think most of the testimony here has indicated that the rigging or the coaching takes place between a dishonest contestant and a dishonest producer, two people. You can have the best security system in the world, and if you have two people who want to be dishonest and who will conduct their dishonesty somewhere other than directly in the studio where it can be observed, it is a very difficult thing to detect.

During the course of this, when we were casting about for additional measures to make sure that these things could not happen on NBC programs, we felt it would be wise to call in an outside agency and get their views on it. That led to our retaining Arthur Young & Co., to come in and make an audit of the security procedures of all of our quiz programs.

They did this beginning in January, and they made a report in which they had a number of recommendations, but their report comes back to this one simple point. That is, in the last analysis, it boils down to the honesty of two people. While surprise audits of the program, while divorcing the people who have knowledge of questions and answers from the people who are talking to contestants and lining up contestants for the show can be of some help, there is always someone connected with the show who really knows what the questions and answers are going to be, and if there is a contestant with whom he desires to conspire to achieve a rigging, he can beat the best system you can devise.

The CHAIRMAN. All witnesses who are here may be excused until 10 o'clock tomorrow, at which time, if you would like to go, we will expect you to return.

Mr. LISHMAN. Mr. Ervin, do you have any knowledge as to whether NBC has information that "Tic-Tac-Dough," a show now on the air, has been fixed?

Mr. ERVIN. We have supplied "Tic-Tac-Dough" kinescopes to the District Attorney. Last week, in preparing for my testimony, I talked to the producer of "Tic-Tac-Dough." I had heard that he had been subpoenaed to appear before this program, I mean before this committee.

I beg your pardon, gentleman.

Mr. LISHMAN. But you have no information?

Mr. ERVIN. His name is Howard Felsher. He said that he had a subpoena to appear here and I said I would like to know from you, Mr. Felsher, whether or not you have ever given questions or answers to any one contestant on "Tic-Tac-Dough." I asked him to give me a sworn statement to that effect. He said he could not give me such a statement.

Upon his refusal to do so, we have discharged him.

That is the only indication that I have other than the fact that we have turned over kinescopes of "Tic-Tac-Dough" to investigating authorities.

Mr. LISHMAN. As I understand it, Mr. Ervin, NBC has severed its relations with Barry & Enright?

Mr. ERVIN. Yes, sir; we have.

Mr. LISHMAN. Do you have any Barry & Enright personnel now retained on your production staff?

Mr. ERVIN. When we assumed direct production responsibility for the Barry & Enright programs, we moved in NBC supervisory personnel at the top, but maintained for the most part the balance of the personnel who had been working on these programs. I don't know the number of them, but I would assume 40 or 50 may be employees, who originally were Barry & Enright employees, now are still working on the programs as NBC employees.

Mr. LISHMAN. When you severed relations with Barry & Enright, did Barry & Enright receive any consideration?

Mr. ERVIN. Let me outline the terms of the settlement for you. This settlement included the following:

We have 4½ years to run on our employment contracts with Barry & Enright. Each of these contracts guaranteed the artist a minimum annual salary of \$100,000. There was a total possibility then of \$900,000 as of last week.

In addition, Barry & Enright developed certain program properties after our purchase agreement in May of 1957, which we had been broadcasting. They also had the 50-percent contingent interest which I testified to a little while ago under the original purchase agreement. They transferred to us all of the balance of their rights in all of those properties.

We paid them a total of \$26,000 and mutual releases were exchanged.

Mr. LISHMAN. How much did NBC receive each week during the period that "Twenty-one" was on the air?

Mr. ERVIN. Mr. Lishman, I don't have those figures here. I can get them and supply them for the record. I take it what you want is the money we received from Mr. Kletter in time charges and program charges?

Mr. LISHMAN. Yes, sir.

Mr. ERVIN. I heard his testimony and the figures he gave you are substantially in accord with my rough knowledge of the situation. If you want precise information I will be glad to supply it.

Mr. LISHMAN. What were those figures?

Mr. ERVIN. He said about \$3½ million a year.

Mr. LISHMAN. I think we would like to have those figures supplied for the record, Mr. Chairman.

Mr. ERVIN. May I suggest this, that we get together with your staff and work out exactly the type of information you want and then we will be glad to supply it to you.

The CHAIRMAN. Yes. I believe Mr. Kletter testified that roughly \$1,250,000 a year went to Barry & Enright for the program and the awards, and then the other—I think he said around \$45,000 a week—went to NBC.

Mr. ERVIN. Yes, sir. From the May 1957 date when we bought the properties the revenues for the program sale also came to us. So from May 1957 on, NBC was the recipient of both the gross program price and the gross price for time charges.

The CHAIRMAN. You may supply that information later.

Mr. ERVIN. Very well, sir.

(The information referred to follows:)

NATIONAL BROADCASTING Co., Inc.,
New York, N.Y., November 2, 1959.

ROBERT W. LISIIMAN, Esq.,
Chief Counsel, Special Subcommittee on Legislative Oversight of the Committee on Interstate and Foreign Commerce, House Office Building, Washington, D.C.

DEAR MR. LISIIMAN: This is in reply to your letter of October 16, 1959, in which you requested certain information for inclusion in the record of the subcommittee's hearings on television quiz shows. The requested information is as follows:

1. NBC entered into the following agreements with Edward Kletter Associates, Inc., Parkson Advertising Agency, Inc., or Pharmaceuticals, Inc. for the telecasting of "Twenty-one":

(a) Contract for the furnishing of telecasting facilities (program to be furnished by the advertiser) reflected by NBC acceptance letter dated June 26, 1956, and subsequently by facilities contract dated June 19, 1956.

(b) Amendment to the facilities contract reflected by NBC letter dated December 20, 1956, and subsequently by amendment to the facilities contract dated January 16, 1957.

(c) Memorandum agreement dated March 18, 1957, covering the furnishing by NBC of telecasting facilities and program.

(d) Facilities contract dated March 18, 1957, formalizing the furnishing of facilities under the March 18, 1957, agreement.

(e) Program contract dated June 21, 1957, formalizing the furnishing of programs under the March 18, 1957, agreement.

(f) Assignment dated as of March 18, 1957, but executed June 21, 1957, from Edward Kletter Associates, Inc. and Pharmaceuticals, Inc., transferring to NBC their interest under the program agreement dated May 28, 1956, between them and Barry & Enright Productions, Inc.

(g) Facilities contract dated March 4, 1958.

(h) Letter agreement dated May 26, 1959, from NBC to Pharmaceuticals, Inc., disposing of contingent payment by NBC to Pharmaceuticals, Inc., on account of the latter's interest in "Twenty-one."

2. The first telecast of "Twenty-one" took place on September 12, 1956; the last, on October 16, 1958.

3. The total amount received by NBC from Pharmaceuticals, Inc. for telecasts of "Twenty-one" was \$6,274,257; out of this amount, substantial sums were paid by NBC for compensation to affiliated stations, music-performing fees, transmission line charges, program production costs, prize money, and other direct and indirect costs. Pharmaceuticals, Inc. was the sponsor of the series during the entire period it was telecast on NBC, being represented by Edward Kletter Associates, Inc. for the first 42 telecasts and by Parkson Advertising Agency, Inc. for the remaining 63 telecasts. The fact that there were only 105 programs over a period of 109 weeks is, of course, due to preemption of the broadcast time for special programs. Attached is a schedule showing—

(a) Column 1: The average amount per week paid to NBC for time and facilities charges only, during the period from September 12, 1956, to March 17, 1957, when Barry & Enright Productions, Inc. owned the program and furnished it directly to the sponsor. The average charge for time in this period is substantially less than the charge in subsequent periods, due to the fact that the program was initially scheduled in the 10:30–11 p.m. period on Wednesday, when only a small lineup of stations carried the program. After the first 18 telecasts, the program was moved to the Monday, 9–9:30 p.m. time period, where it was carried by a much larger lineup of stations.

(b) Column 2: The average amount per week paid to NBC for time, facilities, and program charges during the period from March 18, 1957, to October 5, 1958. Although the sale of the "Twenty-one" property was not consummated until May 2, 1958, the arrangements for NBC to assume the obligation of furnishing the program to the sponsor were effective March 18, 1957. During this period Mr. Enright was executive producer and Mr. Freedman was producer of the program.

(c) Column 3: The average amount per week paid to NBC for time, facilities, and program charges during the period from October 6, 1958, to October 16, 1958, the concluding period when Messrs. Enright and Freedman no longer served in the foregoing capacities.

I believe the figures are self-explanatory; however, if you desire additional information, we will be happy to furnish it.

Very truly yours,

THOMAS E. ERVIN.

"Twenty-one" payments by sponsor to NBC

	Weekly averages for the period—		
	Sept. 12, 1956–Mar. 17, 1957 (25 shows)	Mar. 18, 1957–Oct. 5, 1958 (78 shows)	Oct. 6, 1958– Oct. 16, 1958 (2 shows)
Time before agency commission.....	\$21,759	\$52,269	\$49,482
Agency commission.....	3,258	7,833	7,646
Time after agency commission.....	18,501	44,436	41,836
Program charge.....		15,815	18,000
Prize money.....		10,000	10,000
Miscellaneous facilities charge.....	3,394	1,356	926
Total per week.....	21,895	71,607	70,762
Total for period.....	547,375	5,585,346	141,536

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Mr. Ervin, Mr. Franklin testified that he was present at a meeting referred to, and I asked you if he was there, and you said so. As I recall Mr. Franklin's testimony he said that at that meeting he was asked not to go to the grand jury and tell the truth. In view of the fact that he said that you were there—

Mr. ERVIN. Mr. Chairman, I don't think he testified that I was at that meeting.

The CHAIRMAN. That was a subsequent meeting that you were there?

Mr. ERVIN. As I heard the testimony, that meeting was with non-NBC people. I don't think any representative of NBC was at that meeting at all.

The CHAIRMAN. Did you have any information whatsoever that anyone attempted to keep him from going to the grand jury?

Mr. ERVIN. I never heard that story until today.

The CHAIRMAN. What you heard today in that regard with reference to the advice of his leaving the country and so forth, to which he testified today, is the first time you have heard it?

Mr. ERVIN. It is the first time I have heard that.

The CHAIRMAN. Did you ever hear anyone indicate that any witness or any person material to this whole thing should in any way refrain from telling the facts?

Mr. ERVIN. No, sir. From the day the district attorney began his investigation our whole effort was to cooperate fully with him and see if we could not once and for all find out the truth of what went on with these programs.

The CHAIRMAN. When did you first hear that Mr. Snodgrass decided that he would tell about his experiences as a contestant?

Mr. ERVIN. I read those charges in the newspaper in September 1958.

The CHAIRMAN. That was approximately a year after you had purchased the program?

Mr. ERVIN. Yes, sir.

The CHAIRMAN. You purchased the program in 1957?

Mr. ERVIN. May 1957.

The CHAIRMAN. What brought about your decision to purchase the program from Barry & Enright?

Mr. ERVIN. The program, "Twenty-one," had become a successful program. It was opposite "I Love Lucy" which was a program that we had a great deal of trouble with since it was so popular. "Twenty-one" was the first show we ever scheduled opposite "Lucy" that showed any promise at all. The Pharmaceuticals contract between Barry & Enright had 13-week cycles in it. Our time contract had, I think, a 26-week expiration date with Pharmaceuticals. At the end of that period Pharmaceuticals would have been able to move the program to any other network. We were interested in retaining "Twenty-one" as an NBC feature. It was beginning to build. We felt that we wanted it as an NBC program. We wanted to keep it on NBC. The only way we could do that was to buy the program.

The CHAIRMAN. When was the first time that you heard about the possibility of some publicity regarding the rigging of these shows?

Mr. ERVIN. The first time I heard about that was in September 1957.

The CHAIRMAN. Was that after you had purchased the show?

Mr. ERVIN. It was after we had purchased the show.

The CHAIRMAN. Mr. Barry and Mr. Enright continued in the production after you purchased the show until recently, is that right?

Mr. ERVIN. That is right. When we purchased the show, we automatically obtained the right to produce the program ourselves. However, simultaneously with the purchase agreement, we entered into a separate production agreement with Barry and Enright as individuals under which they continued to produce the show for us at cost. We paid them the cost of producing, nothing more.

The CHAIRMAN. As I understand it, you, yourself, as general attorney for NBC, handled this matter when it was brought to the attention of your company.

Mr. ERVIN. That is right.

The CHAIRMAN. Did it not occur, Mr. Ervin, that it would be helpful to clarify it if you or someone for you had gone and talked to the contestants?

Mr. ERVIN. At the time that did not occur to me, sir.

The CHAIRMAN. When did that first occur to you that it would be helpful to you?

Mr. ERVIN. After the Snodgrass charges were made public, I felt that the time had come for us to talk to contestants. That was after the district attorney's investigation had begun. I have already testified as to what we did at that point.

The CHAIRMAN. It seems rather an unusual situation that a person who is a contestant, and where there was money involved, as it was, and there were more of them, to have not gone to the contestant himself and made some inquiry.

Mr. ERVIN. Sir, I can only say that looking at it at the time that I did, without the benefit of all of the disclosures that have been made here, with the representation of a man in whom we had complete confidence at that time, that Mr. Stempel had made charges and had later withdrawn them in writing, and admitted that they were false, had apologized for making them—

The CHAIRMAN. Did Mr. Stempel sign a statement that he withdrew the charges?

Mr. ERVIN. Yes, he did.

The CHAIRMAN. Who has that statement?

Mr. ERVIN. The district attorney probably has.

Mr. McKAY. If I may address the chairman, the statement as well as the tape recording was turned over in my presence to the district attorney's office in New York County. I believe it was marked as an exhibit later on. That was the meeting I was present at that Mr. Ervin referred to.

The CHAIRMAN. Yes, I have heard something about that tape recording, too. We are not dealing with tape recording around here. We have had our experiences in that matter. I have also heard in connection with that tape recording there is some question as to the method in which that was obtained, too. But that is a matter for the New York grand jury. You did have a statement that Mr. Stempel signed?

Mr. McKAY. It was turned over by, I believe, Mr. Enright in my presence when he was there with his counsel and Mr. Franklin.

The CHAIRMAN. Mr. Ervin, did it ever occur to you to investigate the circumstances under which that statement was obtained?

Mr. ERVIN. No, sir, I heard Mr. Enright's description of how it was obtained, and what was in it, and I believed him.

The CHAIRMAN. Mr. Stempel testified here that there were certain assurances given to him about his future and what he might have been able to have in the way of remuneration for employment in the future. You had no such information yourself that such assurances were given?

Mr. ERVIN. I believe Mr. Enright in his discussion with me mentioned the fact that Mr. Stempel really wanted a job.

The CHAIRMAN. At that time?

Mr. ERVIN. That is right.

The CHAIRMAN. Mr. Mack, do you have any questions?

Mr. MACK. Yes, Mr. Chairman.

Was Mr. Franklin ever employed by NBC or was his public relations firm employed by NBC?

Mr. ERVIN. No, sir.

Mr. MACK. NBC did send him a check for certain services which he rendered?

Mr. ERVIN. After hearing his testimony I have checked by telephone with New York. No checks drawn by the National Broadcasting Co. as payor have ever been delivered to Mr. Franklin. Mr. Franklin's publicity firm had an arrangement with one of the Barry & Enright programs under which he received a weekly check from a partnership entitled "Production Services," which was a Barry & Enright partnership. When in October 1958 we took over responsibility for the production of the Barry & Enright programs, Production Services checks continued to go to Mr. Franklin's firm until about December 1958 when that program itself went off the air. I think that is what he was referring to.

Mr. MACK. During that short period he was receiving checks from—

Mr. ERVIN. From a partnership which we were operating under our takeover agreement with Barry & Enright; yes, sir.

Mr. MACK. What date was he dropped from the payroll, so to speak, or do you have that information?

Mr. ERVIN. As I understand the information, and I will check it more thoroughly when I get back to New York and supplement it if necessary, the arrangement was for services in connection with the program which went off the air in December 1958. The arrangement terminated when the program went off the air.

Mr. MACK. Was that also the time that he appeared before the grand jury?

Mr. ERVIN. I do not know when he appeared before the grand jury.

Mr. MACK. He indicated that he would be dropped at the time he appeared before the grand jury. Have you heard that statement?

Mr. ERVIN. I heard his testimony. I don't recall the dates he gave.

Mr. MACK. You had nothing to do with the termination date?

Mr. ERVIN. Nothing at all. I didn't know these checks had been going to him until I learned about it by telephone today.

Mr. MACK. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Mr. Ervin, in the statement which you have issued today you said:

When charges against the program, "Twenty-one," were first made public last fall, its producers, Barry & Enright, gave NBC written and verbal assurance that these charges were without foundation. Nevertheless, NBC took prompt action to relieve Barry & Enright of any control over these programs pending the outcome of the investigation. Direct production responsibility of all Barry & Enright programs on NBC was thereafter assumed by the network.

When these charges were made the year before, in August 1957, you were in control of the program, were you not?

Mr. ERVIN. We owned the program. Barry & Enright were still producing it.

Mr. SPRINGER. You did not make any effort at that time to relieve Barry & Enright of control over the production, did you?

Mr. ERVIN. We did not.

Mr. SPRINGER. However, when it came out in the newspapers a year later, then, for the first time, you made an effort to relieve them of the production of the show, is that true?

Mr. ERVIN. On the timing that is true. The distinction in my mind is the Snodgrass charges were the ones which led to the action.

Mr. SPRINGER. I am now reading from your release of August 28, 1958:

The charges made by Herbert Stempel against the quiz show, "Twenty-one," first came to our attention over a year ago. At that time, we made an investigation and found them to be utterly baseless and untrue.

The extent of your investigation in August 1958 was to accept the word of Barry & Enright in what they said about Herb Stempel. Was not that the extent of your investigation?

Mr. ERVIN. Backed up by the written statement and the tape recording which Mr. Enright had.

Mr. SPRINGER. When did you first see these statements and these recordings?

Mr. ERVIN. I think not until 1958. I did not see them in 1957. They were described to me. I was told they were available for my inspection. I did not look at them at that time.

Mr. SPRINGER. Do you feel, Mr. Ervin, that an organization as large as NBC has a duty to its listeners to investigate programs of this type to determine whether or not they are honest?

Mr. ERVIN. Certainly.

Mr. SPRINGER. Would you have the same duty to investigate employees of your own company with reference to the same matter?

Mr. ERVIN. Certainly.

Mr. SPRINGER. And that is true today as it was a year ago in 1958?

Mr. ERVIN. Yes, sir.

Mr. SPRINGER. Is Howard Felsher a member of your organization now?

Mr. ERVIN. I testified a little while ago that Howard Felsher's employment was terminated last week.

Mr. SPRINGER. How long ago was "Tic-Tac-Dough" in operation?

Mr. ERVIN. "Tic-Tac-Dough" is still being broadcast.

Mr. SPRINGER. Was information concerning "Tic-Tac-Dough" presented to the New York grand jury?

Mr. ERVIN. We supplied information with respect to some "Tic-Tac-Dough" programs to the district attorney.

Mr. SPRINGER. Was Howard Felsher responsible for producing that program?

Mr. ERVIN. He was the producer of the program.

Mr. SPRINGER. However, is it not a fact that you only came forward to relieve this man of his duties on the evidence adduced by this investigation?

Mr. ERVIN. I had no reason to suspect Mr. Felsher. I heard he was subpoenaed and asked him to give me an affidavit. He refused to give me an affidavit.

Mr. SPRINGER. Did you ask him for an affidavit before that time?

Mr. ERVIN. I did not.

Mr. SPRINGER. Do you believe that the public would be warranted in concluding, as a result of the retention of Mr. Felsher on the payroll until the eve of this investigation, that you had not conducted a very thorough investigation of your employees?

Mr. ERVIN. I would hope that they would not draw that conclusion.

Mr. SPRINGER. I am not attempting to draw any myself, but that was very evident to us when we went into this on Sunday with the staff. Here was a man who disappeared from the rolls only a few days ago after he was subpoenaed to testify before this committee.

Mr. ERVIN. When we took over production of "Tic-Tac-Dough" we assigned an NBC producer to supervise Mr. Felsher in the work with him.

Mr. SPRINGER. Mr. Ervin, if Mr. Felsher had given you an affidavit saying that he was not guilty of any of this fixing on "Tic-Tac-Dough," would you have retained him on your payroll?

Mr. ERVIN. We would have.

Mr. SPRINGER. Would you have made any further investigation to determine whether or not Mr. Felsher's affidavit was in fact true?

Mr. ERVIN. We would have awaited the outcome of the hearings, since he was under subpoena, to see what testimony developed, and we would try to find additional information from the district attorney.

Mr. SPRINGER. Would you have made any independent investigation of contestants to determine whether or not Mr. Felsher's affidavit was true?

Mr. ERVIN. We would have proceeded to that if the answer had not come out of either of the two public investigations.

Mr. SPRINGER. You would have proceeded to make a separate investigation to determine whether or not Mr. Felsher's affidavit was true?

Mr. ERVIN. If the public investigations did not provide the answer.

Mr. SPRINGER. But you would have waited until after the public investigation before conducting an investigation of your own?

Mr. ERVIN. That is right.

Mr. SPRINGER. You do not feel that there is any duty incumbent upon you as a national organization, broadcasting over airwaves granted to you by the Government, independently to make your own investigation to determine whether your employees are reliable?

Mr. ERVIN. We felt that we had provided adequate security measures to keep any rigging from taking place in the future. As to what happened in the past, we would like to find out what happened in the past. We were waiting until the investigations gave us the answer. If they did not then we would engage upon our own.

Mr. SPRINGER. It meant that a period of more than 1 year—from August 1958 until October 1959—elapsed before you asked Mr. Felsher for an affidavit with reference to whether he was guilty of any practices of fixing on "Tic-Tac-Dough." Am I correct?

Mr. ERVIN. Not at all. When we took over production of "Tic-Tac-Dough," an NBC executive named Bob Aaron was assigned to supervise the show. He worked closely with Mr. Felsher. He made spot checks of the program. On a number of occasions, he would go into the studio and shift the order of the questions before air time as a check to make sure that the order of the cards had not been prearranged before the program.

Mr. SPRINGER. Mr. Ervin, do you remember when Mr. Felsher was subpoenaed by the New York grand jury?

Mr. ERVIN. I did not know he had been subpoenaed.

Mr. SPRINGER. You didn't know that he had been subpoenaed?

Mr. ERVIN. I don't believe I did.

Mr. SPRINGER. Did you know that he testified?

Mr. ERVIN. I don't know that he did.

Mr. SPRINGER. Are you positive that you have no knowledge that Mr. Felsher testified before the grand jury?

Mr. ERVIN. The grand jury minutes have not been available to us at all.

Mr. SPRINGER. Mr. Felsher did not reveal to you that he testified before the grand jury.

Mr. ERVIN. He did not.

Mr. SPRINGER. Did he ever reveal to you that he had been subpoenaed by the grand jury?

Mr. ERVIN. He did not.

Mr. SPRINGER. When did you first find out that he was subpoenaed to appear before this committee?

Mr. ERVIN. Last week.

Mr. SPRINGER. How did you get that information?

Mr. ERVIN. Well, there were a lot of sources of information last week as to who had subpoenas and I am not quite sure where this one came from. It may be from another person in the staff of NBC.

It may have been from the committee staff. I called him in and asked him if he had been subpoenaed. He did not volunteer the information to me. He said he had been.

Mr. SPRINGER. Do you feel today, Mr. Ervin, as general attorney for NBC, that there is a duty to investigate other employees that may be on NBC's payroll with reference to whether or not they engaged in practices similar to this in the past?

Mr. ERVIN. I think our primary duty is to take every step that we can to see that the programs we are now broadcasting do not contain any rigging.

Mr. SPRINGER. That was not my question. Would you read the question back, Mr. Reporter.

(Question read by the reporter.)

Mr. ERVIN. Yes, if the results of this investigation don't completely answer the problem for us.

Mr. SPRINGER. You do not believe there has been any duty up until now to make such an investigation independently at NBC?

Mr. ERVIN. As I have said before, we have been awaiting results of these investigations.

Mr. SPRINGER. May I say that a year ago there was no contemplation of any investigation by this committee.

Mr. ERVIN. No, but the district attorney was investigating, sir.

Mr. SPRINGER. Would you say because there were no indictments returned by the grand jury in New York that there was no duty to investigate your own employees to determine whether or not they had violated a public confidence by rigging these programs?

Mr. ERVIN. No. Actually there was one indictment returned.

Mr. SPRINGER. That was for perjury.

Mr. ERVIN. That is right.

Mr. SPRINGER. He was not your employee.

Mr. ERVIN. No, he was not.

Mr. SPRINGER. Did you see the kinescope here yesterday? Were you here yesterday?

Mr. ERVIN. I was not, sir.

Mr. SPRINGER. Have you seen the kinescope of the show on which Mr. Van Doren and Mr. Stempel appeared?

Mr. ERVIN. I have not seen that kinescope.

Mr. SPRINGER. You have not had a chance to review the testimony given by Mr. Stempel and compare it with what happened on the kinescope?

Mr. ERVIN. I have read the transcript.

Mr. SPRINGER. Did you also read the testimony of other witnesses before this subcommittee that they were given questions and answers prior to appearing on the program?

Mr. ERVIN. I read Mr. Snodgrass' testimony.

Mr. SPRINGER. Is it your opinion on the basis of the kinescope and the testimony rendered yesterday, that Mr. Van Doren must have been given the questions and answers in advance and that he has not told the truth?

Mr. ERVIN. Mr. Van Doren has stated that he had not been given the questions and answers.

Mr. SPRINGER. My point in asking all of this is not what Mr. Van Doren said or what Mr. Felsher said. Have you made an investiga-

tion to determine whether or not the statements Mr. Van Doren made are reliable and truthful?

Mr. ERVIN. We have made no investigation of Mr. Van Doren other than to ask him for his statement as to whether or not he received answers.

Mr. SPRINGER. Now, my question is, Do you intend to make any other investigation to determine whether or not what he has said is in fact truthful?

Mr. ERVIN. We have none in prospect now, sir.

Mr. SPRINGER. Have you ever asked him whether or not he received any answers?

Mr. ERVIN. He volunteered the statement on one of our programs that he had never received answers. I have never asked him directly.

Mr. SPRINGER. Who has asked him directly in your organization?

Mr. ERVIN. I don't know that NBC asked him, because before anybody asked him, he made a statement that he had not.

Mr. SPRINGER. Has anybody asked him if he received any questions?

Mr. ERVIN. He said he had not received questions or answers, as I recall.

Mr. SPRINGER. Have you asked Mr. Van Doren for an affidavit similar to that requested of Mr. Felsher?

Mr. ERVIN. No; we have not.

Mr. SPRINGER. Do you feel, in view of the testimony given here, that it is necessary for NBC to make any independent investigation on its own and determine whether or not what Van Doren says is true?

Mr. ERVIN. Sir, I am a little puzzled how we could make an investigation without the powers that the public investigating bodies have.

Mr. SPRINGER. Certainly you should show him this kinescope wherein they tied once at 17 and twice at 21.

Mr. ERVIN. We could do that.

Mr. SPRINGER. Three ties in a row. Most unusual, because each one independently had to select just the right numbers in order to arrive at a tie. I believe you will find that the chances of that happening are one in a good many thousand if you figure it out mathematically. That is the only conclusion I can come to, Mr. Ervin, and if that is not sufficient for NBC to make an investigation of some kind, I don't know what is.

Mr. ERVIN. As I understand he has sent a telegram to the committee. It would be our hope he would testify here so we could get the benefit of this.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. I would like to suggest to you, Mr. Ervin, that it might be helpful, too, for you and your organization to run a kinescope of that showing.

Mr. ERVIN. Very well, sir.

The CHAIRMAN. And at the same time compare it with the testimony that was given to this committee on it and then see how you can reconcile some of the facts.

Mr. ROGERS?

Mr. ROGERS. Mr. Ervin, with relation to the affidavits that you took, have you gotten affidavits from all the other employees associated with these shows that were under suspicion?

Mr. ERVIN. No, sir.

Mr. ROGERS. How many affidavits have you gotten?

Mr. ERVIN. Nine.

Mr. ROGERS. Why did you not get affidavits from the others?

Mr. ERVIN. The affidavits were obtained as a result of the specific disclosures with respect to the Snodgrass charges. We asked for affidavits from anyone in the organization who had any contact with Mr. Snodgrass.

Mr. ROGERS. You asked for specific affidavits from the individuals. You did not ask the group to furnish affidavits if they felt like doing so?

Mr. ERVIN. We asked counsel for Barry & Enright to determine who in the organization had any contact with Mr. Snodgrass in any way and for all of those people who had contact in any way to give us affidavits.

Mr. ROGERS. I believe you said you had not asked Mr. Van Doren specifically for a statement on that, but you were relying on what he had said on the air.

Mr. ERVIN. That is right, sir.

Mr. ROGERS. Is he an employee of NBC?

Mr. ERVIN. He is under contract to NBC.

Mr. ROGERS. He is under contract?

Mr. ERVIN. Yes.

Mr. ROGERS. You do not consider that as an employee?

Mr. ERVIN. I am not certain whether he is in an employee status or independent contractor status but he performs on programs. Our contract with him has until next year sometime to run.

Mr. ROGERS. But no attempt has been made to obtain an affidavit from him?

Mr. ERVIN. No.

Mr. ROGERS. I assume that in New York you do have a false swearing statute, Mr. Ervin, and the difference between obtaining a man's statement, and a man's signing an affidavit that was false, is one simply of subjecting him to prosecution of the false swearing statute and the other would not.

Mr. ERVIN. I am sorry. I don't know the answer to that.

Mr. ROGERS. Why would you want to get an affidavit? What good would an affidavit do if you could not prosecute the man if he told a falsehood?

Mr. ERVIN. I think the solemnity of the oath and the swearing to it is always a much more effective thing to obtain where there is a question of truthfulness arising.

Mr. ROGERS. That is one of the reasons why one is subject to prosecution and the other is not, as you well know, I am sure. But you did not undertake to talk to any of the other employees except that you let Barry & Enright obtain affidavits from them; is that correct?

Mr. ERVIN. No. We talked to a great many of the employees as to security measures on the program. On statements that "I have never given questions or answers to contestants," that is correct.

Mr. ROGERS. Did any person in the organization receive a subpoena to appear before the grand jury who was not asked to give an affidavit?

Mr. ERVIN. Any person at NBC?

Mr. ROGERS. Or connected with these programs.

Mr. ERVIN. I am not aware of exactly who received subpoenas to appear before the grand jury. Some people have received subpoenas and have notified us about them.

Mr. ROGERS. Let me ask you this: Did you try to obtain an affidavit from every person who was subpoenaed that you knew about?

Mr. ERVIN. I asked several other producers of programs for affidavits, but they had not received subpoenas.

Mr. ROGERS. I am not talking about that. There were several people subpoenaed by the New York grand jury concerning this quiz investigation, were there not?

Mr. ERVIN. Yes, there were.

Mr. ROGERS. Associated with the programs that NBC was showing. Did you obtain an affidavit from all of the people who were to appear before the grand jury or attempt to get an affidavit?

Mr. ERVIN. In the first place, as I said before, I do not know who the persons were in every case.

Mr. ROGERS. I mean the ones you do know that you attempted to get an affidavit.

Mr. ERVIN. No NBC employee received a subpoena.

Mr. ROGERS. You mean by that, that none of the employees of Barry & Enright associated with these programs got a subpoena?

Mr. ERVIN. No, I think there were people associated with those programs that got subpoenas.

Mr. ROGERS. Who was this man that you discharged employed by?

Mr. ERVIN. Howard Felsher was employed originally by Barry & Enright.

Mr. ROGERS. By Barry & Enright?

Mr. ERVIN. That's right, as of last week.

Mr. ROGERS. As a matter of fact, at the time the grand jury investigation was going on, Mr. Ervin, NBC was operating this Barry & Enright operation, were they not?

Mr. ERVIN. That is true.

Mr. ROGERS. Although you say there were no employees of NBC directly, they were in the same position, so to speak, as Mr. Franklin was. He was employed by one of the corporations in this group.

Mr. ERVIN. That is so, but the people in that position did not report to us whether or not they had received subpoenas.

Mr. ROGERS. Have you fired anybody else for not giving an affidavit besides Mr. Felsher?

Mr. ERVIN. No, I don't believe so.

Mr. ROGERS. Have you received an affidavit from everyone you have asked?

Mr. ERVIN. Yes.

Mr. ROGERS. Now, one other question. You stated that you did not understand that Mr. Franklin's testimony was to the effect that you were present when a discussion was had about everybody telling a lie but Mr. Franklin and then prosecuting him for perjury.

Mr. ERVIN. That is correct.

Mr. ROGERS. If Mr. Franklin testified that you were present in one of those meetings, was that true or false?

Mr. ERVIN. That was false.

Mr. ROGERS. If he testified that there were other NBC people at a meeting when that occurred, would you say that was true or false?

Mr. ERVIN. I would have to have the identity of the NBC persons in question. I would be very much surprised if any NBC person was present.

Mr. ROGERS. Mr. Eiges and Mr. Moore?

Mr. ERVIN. They are NBC employees. They have never reported to me that a statement of that type was made by Mr. Franklin in a meeting which they attended.

Mr. ROGERS. You say they never reported to you. Do you know of any meeting where any such transaction took place?

Mr. ERVIN. I know of no such meeting.

Mr. ROGERS. Have you ever, at any time, attended a meeting where a suggestion was made that people in that meeting, connected with this investigation, tell the grand jury or any other official body a story that was not the truth?

Mr. ERVIN. No, sir.

Mr. ROGERS. Mr. Ervin, how many meetings had you been to that were attended by yourself and Mr. Franklin?

Mr. ERVIN. One.

Mr. ROGERS. Where was that held?

Mr. ERVIN. Mr. Bilby's office.

Mr. ROGERS. Mr. Bilby, is he an attorney?

Mr. ERVIN. He is the vice president in charge of public relations for NBC.

Mr. ROGERS. That is the only meeting you attended?

Mr. ERVIN. The only meeting that I attended that Mr. Franklin attended.

Mr. ROGERS. Do you know any other meetings where NBC personnel were present concerning this particular problem and at which Mr. Franklin was also present?

Mr. ERVIN. I know of two others.

Mr. ROGERS. Where were they held?

Mr. ERVIN. I do not know where the first one was held but that is the meeting at which Mr. Eiges and Mr. Moore were present. The second is a meeting in the district attorney's office at which Mr. McKay was present and those are the only meetings I know of.

Mr. ROGERS. That is all, Mr. Chairman. Thank you.

The CHAIRMAN. Mr. Derounian?

Mr. DEROUNIAN. Mr. Ervin, is it your testimony that at the time you had Mr. Enright in your office, he had the statements and recordings of Stempel's confessions, so to speak?

Mr. ERVIN. He did not have them with him. He described them in great detail. He said they were locked in his safe in his office and were available to me to look at any time I wanted to.

Mr. DEROUNIAN. Did you ask to hear them?

Mr. ERVIN. I did not at that time. I planned to hear them later.

Mr. DEROUNIAN. But you never did hear them, did you?

Mr. ERVIN. No.

Mr. DEROUNIAN. It turned out to be a hoax, did it not?

Mr. ERVIN. No. He had them. His description was accurate. I have not heard it. I have read the transcript of the tape recording. I have read the written statement. They are, as I recall the meeting, accurately described.

Mr. DEROUNIAN. You took Mr. Enright's word for it that these things were on the up and up. You seem to have fallen into a pat-

tern of taking a person's word on things that should arouse your interest as an experienced lawyer. I would suggest that you have been quite naive in a few of these instances, without slamming your professional reputation. Do you agree that is what happened?

Mr. ERVIN. I am sorry you feel that way, sir. I think my confidence in Mr. Enright was misplaced.

Mr. DEROUNIAN. It certainly was. That is the reason I go back to the point. Do you believe now that, as a general rule, the contestants whose preparation was under the direction of Mr. Enright may have been fixed? Have you come to that conclusion in your own mind, or do you still think that most of them were honest?

Mr. ERVIN. I don't know what to think about most of them. From the testimony I have seen here it seems to me that certainly the charges were true as to some of them.

Mr. DEROUNIAN. What kind of contract does Mr. Van Doren have with the National Broadcasting Co.?

Mr. ERVIN. He has a contract that calls for appearances at our request on programs, a talent contract, that has until, I think, next August to run.

Mr. DEROUNIAN. What is your financial liability?

Mr. ERVIN. \$50,000 a year.

Mr. DEROUNIAN. I have no further questions.

The CHAIRMAN. Mr. Flynt?

Mr. FLYNT. Very briefly, I hope, Mr. Chairman.

Mr. Ervin, you purchased "Twenty-one" in May of 1957, is that correct?

Mr. ERVIN. That is correct.

Mr. FLYNT. Approximately \$2 million.

Mr. ERVIN. Approximately \$2.2 million.

Mr. FLYNT. What price was reported in the daily or trade press?

Mr. ERVIN. I have seen various prices.

Mr. FLYNT. You have seen the figure \$4 million?

Mr. ERVIN. Yes, I have.

Mr. FLYNT. Is that the figure that was commonly reported in the trade press?

Mr. ERVIN. I have seen stories quoting the \$4 million figure.

Mr. FLYNT. Did NBC make any effort to correct that or just let it ride?

Mr. ERVIN. No, we normally do not release evidence at all as to the price of the contract and we do not admit or deny the stories that purpose to be accurate on the subject.

Mr. FLYNT. Do you know who instructed Mr. Franklin to report the sale price as \$4 million?

Mr. ERVIN. I don't know that anybody instructed him other than his testimony today.

Mr. FLYNT. When did you find out that Mr. Felsher had been subpoenaed by the New York County grand jury?

Mr. ERVIN. One day last week.

Mr. FLYNT. When did Mr. McKay find it out?

Mr. McKAY. Sir, I didn't find it out. Mr. Ervin just advised me today of that fact.

Mr. FLYNT. When did you find out that certain records and kinescopes and other personnel connected with "Tic-Tac-Dough" had been subpoenaed by the grand jury?

Mr. ERVIN. By the grand jury? Sometime in the fall of 1958.

Mr. FLYNT. Was there any reason that you did not think that Mr. Felsher—was he producer of that program?

Mr. ERVIN. He was the producer of the program.

Mr. FLYNT. Did you believe that everybody would be subpoenaed except the producer?

Mr. ERVIN. I had no belief about who was being subpoenaed.

Mr. FLYNT. Did you ask him if he had been subpoenaed?

Mr. ERVIN. I did not.

Mr. FLYNT. Did you make any investigation to determine at that time whether or not anything was wrong with this "Tic-Tac-Dough" program?

Mr. ERVIN. We had taken over production responsibility of the program at that time and had NBC personnel supervising Mr. Felsher and the others.

Mr. FLYNT. Who in the NBC organization is charged with the responsibility of making investigations of reports of alleged irregularities?

Mr. ERVIN. I think it would depend upon what the report was.

Mr. FLYNT. A report that a quiz program was framed.

Mr. ERVIN. That would be me, sir.

Mr. FLYNT. When were you first advised that a charge had been made that "Twenty-one" was crooked?

Mr. ERVIN. I have testified that this Stempel information came to me in September 1957.

Mr. FLYNT. In 1957?

Mr. ERVIN. Yes, sir.

Mr. FLYNT. You say you never asked Mr. Stempel whether it was true or false?

Mr. ERVIN. No, sir.

Mr. FLYNT. Did you ever attempt to verify what purported to be Mr. Stempel's signature on a written statement?

Mr. ERVIN. No, sir.

Mr. FLYNT. Your investigation consisted of asking and accepting at face value the word of people against whom that charge had been leveled?

Mr. ERVIN. Plus the evidence that they had.

Mr. FLYNT. If a grand jury or district attorney or committee such as this were to confine its questioning to persons whom charges had been leveled against, would you consider that to be a fair and impartial investigation?

Mr. ERVIN. I would not.

Mr. FLYNT. Did you so consider your investigation to be a fair and impartial investigation?

Mr. ERVIN. I did not believe that an investigation beyond what I learned was required.

Mr. FLYNT. Did Mr. Enright tell you that you couldn't put any confidence in what Mr. Stempel might say because he had been under psychiatric care?

Mr. ERVIN. He told me that was one of the disturbing factors in the situation.

Mr. FLYNT. Did he tell you that he was the man who sent him to a psychiatrist?

Mr. ERVIN. He told me.

Mr. FLYNT. Did you sort of suspect maybe that was in an effort to discredit Mr. Stempel?

Mr. ERVIN. Not at the time. He told me he had sent him to a different psychiatrist. Mr. Stempel had his own.

Mr. FLYNT. Did you question the reliability of either Mr. Enright or anyone else when the press reports carrying the sale price of "Twenty-one" netted twice the actual figure?

Mr. ERVIN. No, I don't think I did anything about those stories.

Mr. FLYNT. Did you ever watch "Twenty-one"?

Mr. ERVIN. Yes, I watched "Twenty-one."

Mr. FLYNT. Have you ever watched the number of questions that sometimes become necessary to build up to a level of about 21, when a man answers questions on the subject of women's fashions, where they select a low point question such as 3 and 4?

Have you ever watched any of those?

Mr. ERVIN. I don't recall any show where they picked the low point questions.

Mr. FLYNT. Then I would be tempted to renew the suggestion made a while ago that such a viewing be participated in, because in one of them there was a series of some three or four, maybe five questions of low point value that resulted in a tie score or something like 18 to 19.

By breaking that down it looks like it is about 11 to the fifth or sixth power, which would seem to be that the mathematical odds on it were almost astronomical, something like 129,000 to 1.

I wonder if that caused you to suspect that this thing might not be exactly a bona fide contest as it was reported to be?

Mr. ERVIN. No. Nothing I saw while watching the "Twenty-one" program on the screen at home ever indicated to me that it was not what it completely purported to be.

Mr. FLYNT. Did you notice anything about the budget arrangement between Barry & Enright and the sponsors?

Mr. ERVIN. When the sponsor's contract was assigned to NBC we, of course, saw the contract.

Mr. FLYNT. Did you recognize immediately that was a controlled budget?

Mr. ERVIN. No. It didn't seem to me to be a controlled budget. It was an arrangement for prize money at a certain level.

Mr. FLYNT. There was a limit on it.

Mr. ERVIN. The sponsor paid \$10,000 a week. If the prize money went over it was the responsibility of the producer and after we bought the program it was our responsibility.

Mr. FLYNT. I believe you told Mr. Rogers you had never requested an affidavit from Mr. Van Doren.

Mr. ERVIN. That is right.

Mr. FLYNT. I have no more questions.

The CHAIRMAN. Mr. Ervin, thank you very much.

Mr. ERVIN. Mr. Chairman, I appreciate the committee staying late to hear me tonight.

The CHAIRMAN. The committee will stand recessed until 10 o'clock in the morning. However, the committee is called into executive session in the committee room at 8 o'clock.

(Whereupon, at 7:30 p.m., the open hearing in the above-entitled matter was recessed, to be reconvened at 10 a.m., on the following day.)

The special subcommittee met at 8:30 p.m., in room 1334, New House Office Building, Hon. Oren Harris (chairman) presiding, a quorum being present.

(The testimony taken at this executive session was released by the subcommittee by vote taken November 3, 1959.)

The CHAIRMAN. The committee will come to order.

This is an executive session in connection with public hearings on the quiz program "Twenty-one." I might advise that the committee has decided to meet in executive session under the provisions of rule XI, 26(m) of the House of Representatives, which provides that if the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall, one, receive such evidence or testimony in executive session; two, afford such person an opportunity voluntarily to appear as a witness; and three, receive and dispose of requests from such person to subpoena additional witnesses.

We have met, then, this evening in executive session to hear, under the provisions of the rules, Mr. Albert Freedman, associate producer of the show, and Mr. Dan Enright, producer of the show.

Mr. Freedman, will you come around?

First, will you be sworn, please?

Do you solemnly swear the testimony you give to this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. You may have a seat, if you desire, Mr. Freedman. First, will you state your full name to the committee for the record?

TESTIMONY OF ALBERT FREEDMAN; ACCOMPANIED BY HIS COUNSEL, CHARLES MURPHY

Mr. FREEDMAN. It is Albert Freedman, F-r-e-e-d-m-a-n.

Mr. MURPHY. I am Charles Murphy.

The CHAIRMAN. Let the record show, also, that Mr. Charles Murphy—what is your address, Mr. Murphy?

Mr. MURPHY. 425 13th Street NW., Washington, D.C.

The CHAIRMAN (continuing). Is appearing as counsel to Mr. Freedman and Mr. Enright, to advise them, under the rules of the House, of their constitutional rights.

Mr. Freedman, as associate producer of "Twenty-one," is the first witness, and Mr. Freedman, I might say, is appearing here as a voluntary witness, meaning, of course, that he is not subpoenaed to appear.

Mr. Freedman, some time ago, took as his residence Mexico City. And in view of the investigation of the quiz shows which this committee now has under consideration, has voluntarily come back to the United States and appeared here, requesting that he be heard in executive session under the rules of the House which I have just referred to.

Mr. Freedman, as I understand, you are here to testify as to the facts of which you have knowledge in consideration of the production of "Twenty-one," a television show, and that you are to testify with relation to witnesses who have appeared and are to appear at these hear-

ings who were contestants in connection with the quiz show "Twenty-one."

Now, with that understanding, do you have any further statement that you wish to make at this point?

Mr. FREEDMAN. I think only one correction, sir. My title is producer of the show, not assistant producer.

The CHAIRMAN. Very well. Let the record show what your official position is.

Now, you, then, have been associated with Barry & Enright?

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. Barry & Enright, the producers of the show?

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. And your position with them is what, or has been what?

Mr. FREEDMAN. My last position with production services was as producer of "Twenty-one."

The CHAIRMAN. Now, with that statement, Mr. Lishman, you may proceed to question Mr. Freedman.

Mr. LISHMAN. Thank you, Mr. Chairman.

The CHAIRMAN. I think the record should also show that in this executive session those who are present are members of the committee, staff members, and others, who are scheduled to appear during this executive session.

Mr. Lishman?

Mr. LISHMAN. Mr. Freedman, when did you first become associated with the firm of Barry & Enright?

The CHAIRMAN. I am going to have to ask both you, Mr. Lishman, and Mr. Freedman, to raise your voices, so that we can all hear.

Mr. LISHMAN. When did you first become associated with the firm of Barry & Enright?

Mr. FREEDMAN. Approximately the first of 1955. In January, I would say, of 1955.

Mr. LISHMAN. And for how long were you associated with that firm?

Mr. FREEDMAN. Until the end of September 1958.

Mr. LISHMAN. Did you, during your association with that firm, become the assistant producer of the television quiz show "Twenty-one"?

Mr. FREEDMAN. Yes, I became the producer of the show.

Mr. LISHMAN. The producer. When did that occur?

Mr. FREEDMAN. Some time in November of 1956.

Mr. LISHMAN. How long had the show been on the air up to that time?

Mr. FREEDMAN. The show started—I am not quite sure when it started, but I think it was in September of 1956.

Mr. LISHMAN. Prior to becoming producer of "Twenty-one," had you been a producer or assistant producer of other quiz shows?

Mr. FREEDMAN. Yes, sir, prior to "Twenty-one," I was the producer of "Tic-Tac-Dough" on NBC.

Mr. LISHMAN. Any other?

Mr. FREEDMAN. Well, prior to that, I was the associate producer of "Life Begins at 80" and "Juvenile Jury."

Mr. LISHMAN. Did you work on the show "Big Enterprise"?

Mr. FREEDMAN. Yes; but I was a writer, you might say a continuity writer, on that show.

Mr. LISHMAN. Mr. Freedman, while you were producer of the television quiz show "Twenty-one," did you reveal to any contestant on that show prior to their appearance the questions and answers which were to be propounded during the show itself?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. Did you furnish in advance the questions and answers that were to be propounded to Mr. Snodgrass?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. On each time that he appeared as a contestant?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. Similarly with the contestant Mr. Jackman, did you in advance of his appearance on the show furnish him with questions and answers?

Mr. FREEDMAN. No. No, I did not.

Mr. LISHMAN. Do you know who did furnish him with such assistance?

Mr. FREEDMAN. Now I do, yes.

Mr. LISHMAN. And who was that?

Mr. FREEDMAN. Mr. Enright.

Mr. LISHMAN. Did you know that at the time?

Mr. FREEDMAN. No, sir. I was not on "Twenty-one" at the time.

Mr. LISHMAN. Did you ever furnish assistance to the contestant Stempel?

Mr. FREEDMAN. No, sir.

Mr. LISHMAN. Did you know that Mr. Enright had furnished such assistance to Mr. Stempel in advance of the program showing?

Mr. FREEDMAN. Well, at that time—Excuse me just one second.

(Mr. Freedman confers with his counsel.)

I am sorry.

Yes.

Mr. LISHMAN. When did you learn that for the first time?

The CHAIRMAN. Just a minute. What was the answer "Yes" to?

Mr. LISHMAN. I asked him if he knew that Mr. Enright had furnished such assistance to Mr. Stempel in advance of the program. His answer was "Yes."

I would now like to know: When did you first learn that Mr. Enright had furnished such assistance to Mr. Stempel?

Mr. FREEDMAN. May I speak off the record, sir, at this point?

(Discussion off the record.)

Mr. LISHMAN. I will rephrase my question. At the time that Mr. Stempel was appearing on the program, did you have personal knowledge that Mr. Enright was assisting that contestant in advance of the program by supplying him with the questions and answers?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. You did have personal knowledge that that was being done?

Mr. FREEDMAN. Well, I—I was not definitely told, but I assumed it was being done.

The CHAIRMAN. Now, Mr. Freedman, we want you to testify to what you know, here, and we do not want any assumptions about any of this. We want to know the facts, precisely what you know.

Mr. FREEDMAN. Yes, sir. In other words, I was not told directly to my face.

The CHAIRMAN. You mean during the time of the show?

Mr. FREEDMAN. I was not told directly, sir, that Mr. Stempel was given questions and answers.

The CHAIRMAN. But did you learn later that that was true?

Mr. FREEDMAN. Well, during the time that he was on, I assumed that he was given questions and answers. In other words, I was not told, but I assumed that he was.

Mr. LISHMAN. Mr. Freedman, did Mr. Stempel at any time tell you that he had been assisted in advance?

Mr. FREEDMAN. No, sir.

Mr. LISHMAN. Did you often furnish assistance to contestants on this show prior to their appearance, by furnishing them with questions and answers that were to be asked on the program?

Mr. FREEDMAN. Well, I will answer that by saying I furnished some contestants questions and answers prior to their appearance on "Twenty-one."

Mr. LISHMAN. About how many contestants were on that program while you were its producer?

Mr. FREEDMAN. I say approximately between 125 to 150 contestants, I would say, during the whole life of the show.

Mr. LISHMAN. And approximately—to approximately how many of that number did you furnish this kind of advance assistance? We are not holding you to any exact number.

Mr. FREEDMAN. I would say approximately 15.

Mr. LISHMAN. Approximately—

Mr. FREEDMAN. Between 15 and 20. I would say around 15. Fifteen to 20. Between that number.

Mr. LISHMAN. In addition to furnishing these contestants with this advance assistance, did you also instruct them as to the number of points that they should ask for?

Mr. FREEDMAN. Yes, sir. Yes, I did.

Mr. LISHMAN. Did you also instruct these contestants as to when they should stop on certain occasions?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. Did you also tell them in advance on some occasions what their scores would be during the contest?

Mr. FREEDMAN. I don't quite understand. You mean at the end of the show?

Mr. LISHMAN. Either at the end of the show, or that it would result in a tie, for example?

Mr. FREEDMAN. Yes.

Mr. LISHMAN. Did you often tell these contestants that it was necessary to have ties in order to build up suspense and get audience appeal?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. Did you give these contestants instructions on how they should act while in the isolation booth?

Mr. FREEDMAN. Some instructions, yes, sir.

Mr. LISHMAN. What kind of instructions would you give them?

Mr. FREEDMAN. Well, something that I told to all contestants was to think before you answered any question, because very often, because people are very nervous, they make mistakes. So it was an important factor to "take your time before answering any question." To pause while answering a question.

Do you want to know specifically?

Mr. LISHMAN. I would like to know specifically what you taught them or instructed them to do in the way of gestures and so on, in order to create the impression on the viewing public that these people were undergoing some kind of strenuous mental effort in order to arrive at the correct answer.

Mr. FREEDMAN. I am just trying to think.

Well, the most important factor was, as I told you—which applied to every contestant on the show—was asking them to take their time, which not only helped them in answering questions but also built up any tension you have in the program, because if you answered immediately, right away, it took away from the drama of the show. And I think that was the most important thing. As far as scratching your head, it depended. If a person did it naturally, then they scratched their head. If they were hot in the booth, and they perspired—and the booth was hot, as has been testified.

Mr. LISHMAN. Have you concluded your description of the mannerisms that you instructed these contestants to engage in?

Mr. FREEDMAN. Generally, sir, I would say.

Mr. LISHMAN. Is it true that while they were receiving these instructions you used a stop watch to make certain as to the time it would take them to make these various gestures?

Mr. FREEDMAN. Well, this was used infrequently, and I didn't use that procedure all the time. It was used infrequently.

Mr. LISHMAN. And did you instruct these contestants that they should from time to time skip the question; that is, even though they knew the correct answer as received from you or from Mr. Enright in advance, that they should skip it and come back to it, in order to increase the tension?

Mr. FREEDMAN. Well, offhand I would say it happened.

Mr. LISHMAN. And you instructed them to expect that to be done?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. And that they should do that?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. Now, when an applicant for "Twenty-one" arrived, what did you do with that applicant?

Mr. FREEDMAN. Well, before an applicant arrived for "Twenty-one," there is a certain procedure that the applicant had to go through. Would you be interested in that, or do you just want to know what happened—

Mr. LISHMAN. You might briefly describe what he had to do, and then we will come up to where you came into the picture.

Mr. FREEDMAN. All right. If an applicant tried out for a show that the organization was producing, they would either call the office or write a letter, and there was a young lady who would take their names and schedule a time where they could come in and take a test. This was the preliminary test. And if those who took this test made out very well, they were then asked if they wanted to take a test for "Twenty-one," which was a much more difficult test, of approximately 360 questions or so. Those who made out very well in this second test were then interviewed by another young lady, and if she felt that the personality suited the program, along with their high score, she then had an interview, set aside a time, so that I could interview that

person. I don't know how many people I used to interview every week, not too many, and the interview would take, well, anywhere from a half hour to 1 or 2 hours. If on the basis of that interview I felt that their background, their work, their personality, how they made out in the test, and so forth—if this contestant had the above qualifications, then I would ask this person or would tell the person that they would be on a—can you hear me all right? That they would be on a standby list for "Twenty-one." And that is how we left it.

MR. LISHMAN. Were you assigned certain contestants who should be in your charge so far as the giving of advance information was concerned?

MR. FREEDMAN. Was I assigned to these contestants?

MR. LISHMAN. Well, among the contestants who came there, were certain of them placed in your charge for the purpose of giving them advance assistance?

MR. FREEDMAN. Well, I don't quite understand that question. I was the one who selected the contestants whom I thought would be qualified for the show, at which time I then made an appointment for these contestants to see Mr. Enright. If these contestants—they were then called in, and they were interviewed by Mr. Enright, and if he agreed with my estimation of these contestants, they were then—I am sorry; I had left this out before—that was the last step. Then they were put on the "Twenty-one" standby list.

MR. LISHMAN. I think I can explain my question to you a little more clearly by giving you a specific example.

As I understand your testimony so far, in the case of the witness Stempel, you did not furnish him with the advance information; that Mr. Enright, according to the testimony received by this subcommittee, did that, with that contestant. And you did not have any knowledge of that, although you assumed it was being done. Now, what I am getting at is: Among the numerous contestants who were on this show, how were the contestants assigned so far as you and Mr. Enright were concerned, as to who would give assistance to a particular contestant?

MR. FREEDMAN. Well, now I understand your question. As far as Mr. Stempel was concerned, I was not the producer when Mr. Stempel first came on the show. I did become the producer while Mr. Stempel was on the show. Consequently, after I became producer, there was no such thing as one being assigned, or if a contestant were to be given help there was no such thing as his being assigned to myself or Mr. Enright.

MR. LISHMAN. Could I say something off the record to refresh the witness' recollections?

THE CHAIRMAN. Oh, yes.

(Discussion off the record.)

MR. LISHMAN. Let's get back, now, to the record.

Did Mr. Enright tell you what contestants should receive this advance assistance?

MR. FREEDMAN. Well, it was a question of both myself and Mr. Enright deciding which contestants we felt needed aid in some measure.

MR. LISHMAN. How did you judge the necessity for that?

MR. FREEDMAN. The necessity? Or whom to pick?

MR. LISHMAN. Whom to pick.

Mr. FREEDMAN. Well, that can only be explained—it is very difficult to explain—that can only be explained by having a feel for it, having been in the business, the show business, for many years, and with all the background of the contestant, as I told you, his occupation, his personality, his knowledge, and so forth, that also with the feeling that one has about this contestant possibly being one that would create enthusiasm. It is purely on that basis. This does not mean that I or Mr. Enright or we were always right, you know.

Mr. LISHMAN. Well, is it correct that in determining who would receive assistance you would first consider who was a good contestant on there that would keep your ratings up?

Mr. FREEDMAN. Well, may I add at this moment that there were good contestants who did not receive assistance who did very well with our ratings. I would like to get that for the record, if I may. On the other hand—I am sorry. What was that question?

Mr. LISHMAN. Would the stenographer read the question?

(The question referred to was read by the reporter.)

Mr. FREEDMAN. It may sound a little unbelievable, but I don't think the rating was the only criterion. It was important, but that wasn't the only one.

Mr. LISHMAN. It was an important one?

Mr. FREEDMAN. Yes; that was an important criterion.

Mr. LISHMAN. Would you take into consideration—let us assume that Mr. Rosenhouse had had dinner with Mr. Enright and had said to him, "Well, there is a contestant on that program. I want you to keep him on." Would that information be passed on to you, to make certain that he received assistance, to keep him on?

Mr. FREEDMAN. All I can say is in the years I have been with Mr. Enright, or the years that I was attached to "Twenty-one," I had never been told anything of that nature, or even approximating that. As far as I can tell you, there has never been any outside influence ever exerted upon me, or as far as I know upon Mr. Enright, to give aid to any contestant.

Mr. LISHMAN. Now, when you first came on this show as producer, how did you come to start giving assistance to a contestant?

Mr. FREEDMAN. Excuse me. Did you mean the methods?

Mr. LISHMAN. When you first came on this show as producer—I will rephrase it. Did you assume that you were going to be producing honest contestants of knowledge?

Mr. FREEDMAN. Well, by the time I had taken over the production reins of "Twenty-one," I had been in the entertainment field for approximately 6 years. During that 6 years I had learned several important things. And that is if you want to work in show business, you must put on an entertaining show. You must put on a show, whether it is radio, which I worked in, or television, or for this matter, any medium of show business—the show must be one that entertains people, one that is not dull, and one where there is sufficient excitement and entertainment value so that audiences will turn—or continue with the show week after week.

From our early days in radio, I have learned that a show, in order to be successful, had to be—for the most part needed control of sorts. This is not to say that every show is controlled. But in working in

the business, all I can say is that you pick up many things. And all of us who work in the business realize this particular factor.

By the time I came to "Twenty-one," it seemed, assuming the role of producer of the show, I knew I had to put on a show, produce a show, that would have a great deal of entertainment value, a show that people would enjoy watching, really enjoy watching. And I knew by that time that at certain periods, at certain times, control was necessary of a degree.

And if you want to know how I came about——

Mr. LISHMAN. If I can short-cut some of this answer, what I wanted to find out was: Was it your idea, or Mr. Enright's idea, that this type of control, of furnishing assistance in advance to selected contestants, should be given? Was it your idea, or his idea?

Mr. FREEDMAN. I won't swear upon it, but I would say it was my idea. I am not completely sure of it, but I would say from what my recollection would be.

Mr. LISHMAN. But is it not a fact that before you came on the program that some assistance had been rendered to Stempel? Mr. Stempel and Mr. Jackman were on the program before you came there as producer, were they not?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. And are you familiar with their testimony, that they had received such assistance in advance?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. So how would it be your idea, if it was already going on when you arrived there?

Mr. FREEDMAN. Are you talking about the idea of how to run the show, or the idea of specific contestants?

Mr. LISHMAN. The furnishing of assistance in advance to the contestants is what I am talking about.

Mr. FREEDMAN. Well, the concept, that concept, of—Well, I am talking of an individual contestant. Whose idea was it to give to an individual contestant? Or whose idea was the overall concept? Well, as I say, it is very hard to say. I was never—how shall I say—"This is how it must be done"—because when you assumed the role of producer of a show of this nature, you assumed that these are necessary controls that have to be done, and you are not told in black and white.

Mr. LISHMAN. Well, Mr. Freedman, let's get down to business here. When you were first employed as producer by Mr. Enright on this show, was it understood by you that you would continue to give this assistance in advance to contestants? Was it, or was it not?

Mr. FREEDMAN. Well, it was not said to me, but it was assumed. I assumed that this would be a manner of operation of the show.

Mr. LISHMAN. What led you to that assumption? What facts?

Mr. FREEDMAN. Well——

(Witness confers with his counsel.)

I am sorry. The only way I can really answer that is that there was nothing in black and white. I just entered the scene, and as far as I can recollect, I just took over, you know.

Mr. LISHMAN. Well, did you and Mr. Enright sit down anywhere and plan in advance how these contests, alleged contests, would be run?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. Did you sit down in advance of the games and decide how many points each contestant should take and what questions and answers they should be told?

Mr. FREEDMAN. On certain contestants, yes, sir.

Mr. LISHMAN. And you did that with Mr. Enright?

Mr. FREEDMAN. Yes.

Mr. LISHMAN. Was anyone else present at these occasions when you were plotting these things in advance?

Mr. FREEDMAN. No, sir; it was only between Mr. Enright and myself.

Mr. LISHMAN. And is it not a fact that with respect to most if not all of the major money winners on this program, they received such assistance in advance?

Mr. FREEDMAN. Mr. Chairman, may I go off the record at this time?

The CHAIRMAN. Yes.

(Discussion off the record.)

The CHAIRMAN. You had some 125 contestants in total. You testified a moment ago that you gave assistance to some 15 or 20 of the total members.

Mr. FREEDMAN. That is right.

The CHAIRMAN. Is that the fact? Is that true?

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. The distinction is: Was it the assistance you gave to that many, or was it the assistance given by both you and Mr. Enright to that many?

Mr. FREEDMAN. No, the inference is the assistance that I gave.

The CHAIRMAN. That you gave yourself to some 15 to 20 of the total 125?

Mr. FREEDMAN. That is right, sir.

Mr. LISHMAN. Mr. Freedman, would you say that some 60 to 70 percent of the shows were fixed?

Mr. FREEDMAN. May I be off the record again, sir?

Mr. LISHMAN. No, on the record.

Mr. FREEDMAN. This was the question that we had gone off the record.

Mr. LISHMAN. No, this is a different one.

The CHAIRMAN. What was the question?

Mr. LISHMAN. I asked him if it is not a fact that 60 to 70 percent of these shows were fixed. This can be off the record if you wish. I will tell you the reason for it. We have information compiled from your testimony before the grand jury which would show that. Now, that is not revealing any names.

(Discussion off the record.)

Mr. LISHMAN. I will ask the question on the record. Is it not a fact that more than 50 percent of the performances of "Twenty-one" were fixed in advance of their showing?

The CHAIRMAN. Well, let us put it like this—

Mr. LISHMAN. Let us put it this way: Or to some degree controlled, so as to assure who would win.

I will rephrase the question. Is it not a fact that in more than 50 percent of the performances some assistance was given to the contestants?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. In advance of the showing?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. Mr. Freedman, have you read the testimony of the witness Snodgrass before the subcommittee?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. Is there anything in his testimony that you would care to correct or state was untrue?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. Would you tell us what that is, please?

Mr. FREEDMAN. The first thing I resented—that as a former Marine—I was in the Marine Corps for 5 years and if anybody in the Marine Corps were to learn that I cried, as he stated, after the show, I would be bounced out of the Marine Corps. I have never cried after any performance or before any performance or during any performance. I want that for the record.

When Mr. Snodgrass—oh, after the performance that Mr. Snodgrass was referring to, I think he put it “doublecrossed me,” however, he did, he said I came down to his room and cried and then I said that I am ruined, and something about budget, and so forth. Well, this is all ridiculous, and it is poppycock, because I never cry. I never discussed budget with any contestant. And I never said I was ruined. I will tell you what I did say. I said, “Why did you do it?” And he said, “Because I wanted to win.” Which is a logical answer, you know.

Mr. LISHMAN. Well, Mr. Freedman, were you not a little bit upset when he came out with Emily Dickinson instead of Ralph Waldo Emerson?

Mr. FREEDMAN. Yes; it was a little unusual. I was upset. But I haven’t cried since I was a child.

Mr. LISHMAN. Is it not a fact that Mr. Bloomgarden won \$75,000 which he otherwise would not have received as a result of Mr. Snodgrass giving the right answer when he was supposed to lose?

Mr. FREEDMAN. May I add it is not my money that is given away. It is NBC’s money. And I couldn’t be more delighted. It was a pleasure when anyone won money.

Mr. LISHMAN. Are you familiar that during the time this performance was on the air the approximate average amount in prize money each week was a little over \$10,000?

Mr. FREEDMAN. Well, I was aware, I did know, at least I think I knew, that the budget for prize money was \$10,000 a week. I did not have, though, control of the prize money. In fact, I very seldom—I can’t recollect my ever discussing that with Mr. Enright. Mr. Enright was purely—was in charge of the financial part of the show.

Mr. LISHMAN. Why were you so upset, if you were not interested in the money end of it, when Mr. Snodgrass gave the right answer?

Mr. FREEDMAN. Because I told him to give another answer.

Mr. LISHMAN. Then was it purely esthetic excitement?

Mr. FREEDMAN. Sorry.

Mr. LISHMAN. Was that a purely esthetic excitement?

Mr. FREEDMAN. On whose part?

Mr. LISHMAN. On your part. Or was it because you felt your judgment had not been vindicated by this man? What was the reason to get upset if you were not interested in the money?

Mr. FREEDMAN. I said I got slightly upset, you know. That was the reason. Because he answered the question. But there was nothing esthetic about it.

Mr. LISHMAN. Did you feel that Snodgrass had not treated you honorably?

Mr. FREEDMAN. Well, this is no time for me to talk about that.

Mr. LISHMAN. I was just wondering what caused you to be upset.

Mr. FREEDMAN. I said I was slightly upset. As far as I can remember, I was slightly upset. And there is no particular devious reason for my being upset. I am just trying to think of the other parts of his testimony.

Mr. LISHMAN. Have you made all the corrections that you desire with regard to Mr. Snodgrass's testimony?

Mr. FREEDMAN. Could I have a moment, sir, so that I could think about it?

Mr. LISHMAN. Yes.

Mr. MURPHY. Mr. Chairman, may I ask a question off the record?

The CHAIRMAN. Yes.

(Discussion off the record.)

Mr. LISHMAN. I will ask the question in another way. Is it a fact that Mr. Snodgrass's testimony that he was furnished by you with information as to the questions and answers that were to be asked him on the program and was told by you the number of points to select in advance of his appearance on the show—is that true?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. That is true?

Mr. FREEDMAN. Yes.

Mr. LISHMAN. Did you tell Mr. Snodgrass, as he has testified, that he was supposed to play a series of ties?

Mr. FREEDMAN. No, sir. When Mr. Snodgrass came on, on the show, he was told about playing one game, about that one show.

Mr. LISHMAN. He was told what?

Mr. FREEDMAN. He was not told about a series of ties. Maybe that is the best way to answer that. He was not told about this series of ties when he was on the show. Or when he first came on the show.

Mr. LISHMAN. Was he ever told that he would play a series of ties?

Mr. FREEDMAN. I don't ever recollect telling Mr. Snodgrass that he would ever be—I never recollect—

Mr. LISHMAN. I will ask the question in another way. Did you, in fact, schedule Mr. Snodgrass so that he would play a series of ties?

Mr. FREEDMAN. No, sir. I did not schedule for that. I selected Mr. Snodgrass—

Mr. LISHMAN. Just a minute. Is it a fact that a series of ties were played by Mr. Snodgrass?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. Well, how could those series of ties be played unless you had planned in advance what points should be asked for?

Mr. FREEDMAN. You had asked me if I had told him at the beginning whether I had planned a series of ties.

Mr. LISHMAN. Yes. I just asked you if you had scheduled that he should play a series of ties. I am not asking you now whether you told him. Did you, or did you not?

Mr. FREEDMAN. May we please go off the record for this a minute?
(Discussion off the record.)

Mr. LISHMAN. Is it a fact that in a number of instances where advance information was being supplied by you to a contestant that you scheduled the points in such a way that there would be a series of ties?

Mr. FREEDMAN. Would you read that?

(The question referred to was read by the reporter.)

Mr. FREEDMAN. Yes. It has happened. It did happen.

Mr. LISHMAN. Now, in giving the assistance that you have described to the contestants in advance of their appearance, were you at all times subject to the direction and control of Mr. Enright?

Mr. FREEDMAN. Was I——

Mr. LISHMAN. At all times subject to Mr. Enright's direction and control?

Mr. FREEDMAN. Regarding contestants?

Mr. LISHMAN. Yes, sir.

Mr. FREEDMAN. Yes.

Mr. LISHMAN. At any time while you were producer of "Twenty-one", were you in effect told to continue a contestant whom you did not wish to have continued on the program?

Mr. FREEDMAN. Not that I recollect, no, sir.

Mr. LISHMAN. Did you ever discuss the giving of assistance to contestants with Mr. Barry?

Mr. FREEDMAN. No, I never discussed any aspect of giving assistance to anyone with Mr. Barry, at any time.

Mr. LISHMAN. Prior to coming with the "Twenty-one" show, had you been employed by Mr. Enright on another show, "Tic-Tac-Dough", as producer?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. Had you used this same concept of controls on that show?

Mr. FREEDMAN. Yes, sir. Well, to a degree. I wasn't on that show very long, but several times.

The CHAIRMAN. Off the record.

(Discussion off the record.)

Mr. LISHMAN. Well, did you give questions and answers in advance on "Tic-Tac-Dough"?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. So that, when you came over to "Twenty-one," you were already familiar with this concept of control as employed by Mr. Enright's other show?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. Did you ever give any questions and answers in advance on the show of the "Big Surprise"?

Mr. FREEDMAN. Sir, off the record.

(Discussion off the record.)

Mr. FREEDMAN. I was on that show a very short time. I think I explained this before. I was a writer on the show. I prepared interviews with the contestants. I was on maybe for one or two months. And several times, at the last moment, I was asked to give help, help several contestants. And that is the extent of any aid I gave on that show. It was very slight.

Mr. LISHMAN. What kind of help did you give, Mr. Freedman?

Mr. FREEDMAN. This is a long time ago, and all that I can recall—in one instance I was told to discuss several questions with a contestant who was to be in the show.

The CHAIRMAN. You mean several questions that were to be a part of the show?

Mr. FREEDMAN. That is right.

Mr. LISHMAN. And were the questions later used on the show?

Mr. FREEDMAN. I really don't remember. I suppose so. I don't know. It was such a long time ago. I had forgotten about this until the grand jury investigation.

Mr. LISHMAN. Who asked you to do that?

Mr. FREEDMAN. It was one of three people. I can't specify, because I really don't know who it was. I know I had been asked, and I really cannot.

Mr. LISHMAN. Was it Mr. Carlin?

Mr. FREEDMAN. I really can't say.

Mr. LISHMAN. Was it Mr. Koplin?

Mr. FREEDMAN. Who?

Mr. LISHMAN. Mr. Koplin.

Mr. FREEDMAN. It could have been—there were three people who were executives.

Mr. LISHMAN. Mr. Barry?

I will give you three names.

Mr. FREEDMAN. No, Mr. Barry had nothing to do with that.

Mr. LISHMAN. Mr. Heater?

Mr. FREEDMAN. No, he wasn't on the show then.

Mr. GOODWIN. Miss Bernstein?

Mr. FREEDMAN. No; a fellow with short hair, very short hair.

Mr. LISHMAN. It was someone who instructed you to do that. Was the gentleman your superior there?

Mr. FREEDMAN. Yes. But it wasn't my job to do that. It must be understood that it was just—they needed an extra hand at the last minute, and I just happened to be available, and they just said, "Please do so-and-so," and I did.

Mr. LISHMAN. Do you recall whether or not the man who instructed you to give this advance assistance in that show associated with Entertainment Enterprises—Production, Inc., rather?

Mr. FREEDMAN. I guess that was the name.

Mr. LISHMAN. He was connected with it?

Mr. FREEDMAN. I don't know whether it was called that at the time. I am not sure. It could have been EPI, or it could be the name before that. I am not sure.

Mr. LISHMAN. The Lou Cowan Enterprises?

Mr. FREEDMAN. It could have been; yes. I am not sure.

The CHAIRMAN. What year did you say it was?

Mr. FREEDMAN. It was the spring of 1956.

Mr. LISHMAN. Did you regard "Twenty-one" as a rehearsed dramatic production?

Mr. FREEDMAN. No, sir. I regarded "Twenty-one" as a very exciting quiz show while it was on. Oh, sometimes not too exciting. But for the most part an entertaining quiz show. I never considered "Twenty-one" a dramatic show.

Mr. LISHMAN. Well, when you had given the assistance to the contestants in advance and knew what was coming, was it more exciting

on such occasions, or less exciting than on the occasions when such information had not been furnished?

MR. FREEDMAN. That is hard for me to say, because in both instances there were exciting shows—instances where there were answers given. And believe me they were exciting shows. And in shows where there were both questions and answers given.

MR. LISHMAN. And in many instances did you tell contestants that they had to lose?

MR. FREEDMAN. In those instances where I helped contestants, there were several times when I told them to lose.

MR. LISHMAN. Now, what happened when you were summoned the first time to appear before the grand jury?

MR. FREEDMAN. The first time? To answer that, I think I have to give you my true feelings at the time. I was frightened. I should put this in the plural. We were all frightened. We were all in panic. We acted very stupidly. We acted in a way that I now regret very, very much. I foolishly lied to the grand jury, and——

MR. LISHMAN. Did Mr. Enright suggest that to you?

MR. FREEDMAN. No.

MR. LISHMAN. Had Mr. Enright suggested that you should not tell the truth before the grand jury?

MR. FREEDMAN. No. No one ever told me not to tell the truth before the grand jury. That was my own decision. And if I may, I would like to tell you why.

In my panic, and not knowing very much of the ground rules of a grand jury—it was a brand new experience for me. We are not hardened criminals. We are in show business. And the only thing I knew about a grand jury is that it would make a good format for a dramatic show. That is about as far as we ever got to know about grand juries. I didn't even know that you were not allowed to have a lawyer before a grand jury. That shows our ignorance, in this case. I assumed one could have his attorney with him. But my feeling at the time was one of great panic. I was then producing "Twenty-one." I had several concerns. I had the concern that the show should not go off the air. I had the concern for the contestants, who I felt, if their identities were revealed, would destroy these people. I felt that the jobs of many of my friends working for the organization would be in jeopardy.

Consequently, when I went before the grand jury, my testimony was foolishly done to safeguard all these three. I now realize that——

MR. LISHMAN. Mr. Freedman, when the story broke in the newspapers that the grand jury was going into this, is it a fact that you went around and met with several of the contestants who had received assistance in advance from you?

MR. FREEDMAN. I will tell you. I did meet some of these contestants, and I told them the following. I told them how I would testify. And I must say that practically all of them were very, very concerned about exposure. And I thought by telling them that, it would make—it would take the terror away from these people.

MR. LISHMAN. Did you assure these contestants that you would not tell the truth before the grand jury so as to implicate them?

MR. FREEDMAN. The way I put it: When I go before the grand jury, I am not going to say that I have given you questions and answers.

Mr. LISHMAN. And did some of these contestants insist that you say that to them?

Mr. FREEDMAN. No. No contestant ever insisted. In fact, no one ever insisted what to say before the grand jury. And at this time, I would like to point out that at no time did I ever go to any contestant and say, "I want you to testify such-and-such before a grand jury." That is one aspect of law I knew, that that was illegal. I would never do that. I never did do that.

Mr. LISHMAN. Did you state to them something like this: I want you to go before the Grand Jury and tell them the truth, that you received no assistance?

Mr. FREEDMAN. I don't recollect my ever giving orders to any—

Mr. LISHMAN. I am not speaking of orders. Did you use language substantially similar to what I have said to any of the contestants?

Mr. FREEDMAN. I don't want you to—would you say that again?

Mr. LISHMAN. "I want you to go before the grand jury and tell them the truth, that you did not receive any assistance." Did you say that to any contestants?

Mr. FREEDMAN. To the best of my knowledge, Mr. Lishman, I never told any contestant either that or what to say before a grand jury.

Mr. LISHMAN. What was your purpose in going around to see these contestants?

Mr. FREEDMAN. Excuse me. The timing of this is a little off. I didn't see these people at the grand jury time. As far as I recollect. Because I think most of the people I did see was during the time that it was being investigated by Mr. Stone, Mr. Stone's office. And after it reached the grand jury, I don't recall. And if I did, I don't remember saying anything of that sort.

Mr. LISHMAN. Well, did you expect that when you assured these people that you would lie when you went down to the grand jury's office that would give them some comfort in their going in there and doing the same thing?

Mr. FREEDMAN. You know, right now it is so hard for me to say what was going through my mind. All I know is that I was panic stricken, and that explains my mental frame of mind. I didn't know what the heck to expect, frankly.

Mr. LISHMAN. Did you go to Mr. Jackman and tell him that if this story ever got out Mr. Enright's career would be ruined?

Mr. FREEDMAN. No.

Mr. LISHMAN. Mr. Jackman has so testified.

Mr. FREEDMAN. Yes. I know. I met with Mr. Jackman. What did you say, again? If I testified to what?

Mr. LISHMAN. If he testified and this story ever got out, that Mr. Enright's career would be ruined, or words to that effect.

Mr. FREEDMAN. If he testified to the grand jury?

Mr. LISHMAN. Yes.

Mr. FREEDMAN. Did Mr. Jackman say that?

Mr. LISHMAN. Yes.

Mr. FREEDMAN. Well, I will tell you what I said to Mr. Jackman. The first time I met Mr. Jackman was—Well, I lived in the Village and he lived in the Village at the time. So I know that Mr. Enright wanted to speak to him. So I looked him up. And that was the extent of my first conversation.

After that, I met him again, and in the course of the conversation we did discuss what would happen—we discussed many things that evening, and among the things were what could conceivably happen if truth of his involvement, if truth of “Twenty-one,” came out. But to the best of my knowledge, in all sincerity, I never counseled him what to do and what not to do. And I must say this, again. I never counseled any contestant as regards the grand jury, as to what to say and what not to say.

Mr. LISHMAN. In your conversation with Mr. Jackman, did you know that he had previously met with Mr. Enright?

Mr. FREEDMAN. Yes.

Mr. LISHMAN. And did Mr. Jackman tell you what Mr. Enright had said to him?

Mr. FREEDMAN. He didn’t discuss the conversation. He never told me what he said to Mr. Enright.

Mr. LISHMAN. Well, did Mr. Enright tell you what Mr. Jackman had said to him?

Mr. FREEDMAN. No, I didn’t discuss it with Mr. Enright. No.

Mr. LISHMAN. Did Mr. Enright tell you to go and see these contestants?

Mr. FREEDMAN. Which contestants? I am sorry. To see all contestants?

Mr. LISHMAN. I am not saying all. These contestants. Or any contestants.

Mr. FREEDMAN. Well, the only one he asked me to see, to look up and see if I could find, as far as I know, is Jackman. He did tell me since I lived down in the Village, and Jackman’s address was in the Village, to look up Jackman and have Jackman call him. As far as any other contestants, I can’t remember.

Mr. LISHMAN. Did Mr. Enright at this time ask you to go around and see any contestants and find out what they were going to testify?

Mr. FREEDMAN. Well, again I must say that this particular period was a very confusing one. What anyone said to me or what I said to anyone——

Mr. LISHMAN. Are you positive that Mr. Enright did not tell you to do that?

Now, you are under oath here, again.

Mr. FREEDMAN. Yes, sir. I know, sir. And I want to tell the truth. And though I can’t give you a positive answer, to the best of my knowledge I don’t know of any instance outside of this Jackman instance where Mr. Enright said, “You go and find out how that man is going to testify.”

Mr. LISHMAN. Did Mr. Enright know you were going to see Mr. Jackman?

Mr. FREEDMAN. He asked me to find——

Mr. LISHMAN. Did you report back to Mr. Enright the results of your visit to Mr. Jackman?

Mr. FREEDMAN. Yes.

Mr. LISHMAN. And what did you report to Mr. Enright?

Mr. FREEDMAN. Excuse me. You mean the time that I had this meeting with Jackman in the Village?

Mr. LISHMAN. Yes.

(Witness confers with his counsel.)

Mr. FREEDMAN. I am sorry. Any hesitancy on my part to answer questions, believe me, is not because I want to pervert the truth. I think I told the whole truth already.

Mr. LISHMAN. What did you report back to Mr. Enright about your visit to Mr. Jackman?

Mr. FREEDMAN. To the best of my recollection, I said that I think that Mr. Jackman is going to tell the truth.

Mr. LISHMAN. Now, without naming names, did you attempt or did you see any other contestants for the purpose of ascertaining what they were going to testify to or what they were going to say to the district attorney? Did you make any attempt or did you actually contact any other contestant?

Mr. FREEDMAN. As I said, I met with contestants before the grand jury investigation. I met with some of them. And I told them my feelings. And of course in the conversation they at times, I suppose at all times, told me how they felt about it. But I didn't counsel them as to what to do. So I suppose that answers your question.

Mr. LISHMAN. Did Mr. Enright know that you were contacting these contestants?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. Did he ask you to do it?

Mr. FREEDMAN. No. He didn't.

Mr. LISHMAN. Did you report back to him the results of what you found?

Mr. FREEDMAN. I suppose I did discuss with him the results.

The CHAIRMAN. What was the purpose of your contacting these contestants that knew you were going before the grand jury?

Mr. FREEDMAN. No, sir, this was before it came before the grand jury. It was before the district attorney. To let them know how I felt. As I said, I was in a very confused state at the time, and my actions at that time were ones of panic. And I have admitted already to you that what I did was stupid.

Mr. LISHMAN. Mr. Freedman, is it a fact that you told each of these persons that you contacted that, "I will testify," or, "I will make a statement to the district attorney" that no assistance was given to you?

Mr. FREEDMAN. The way I put it was this: If I were asked by the district attorney if I have given assistance to you, I am going to say I didn't. That was the gist of what I said.

Mr. LISHMAN. Did Mr. Enright know that you were making a statement of this kind to these contestants?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. He did know?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. Did you get any reactions from the persons to whom you told this that they would adopt a similar policy, in view of what you had just told them?

Mr. FREEDMAN. Well, some told me their feelings. I would say the majority of them told me how they felt and what their attitudes were, too.

Mr. LISHMAN. And did they say that they would do the same thing that you were going to do?

Mr. FREEDMAN. Well, some said they would. Some didn't comment.

Mr. LISHMAN. Did you ask any of these contestants to go and speak to an attorney? Did you ask any of them to go and speak to an attorney whom you named?

Mr. FREEDMAN. No. As far as I know, I never asked them to see any attorney.

See who? My attorney?

Mr. LISHMAN. Enright's attorney.

Mr. FREEDMAN. Oh, I had an attorney at that time.

Mr. LISHMAN. Did you ask them to go to see either your attorney or Enright's attorney?

Mr. FREEDMAN. To the best of my knowledge, I didn't ask anyone to see my attorney or Enright's attorney.

Mr. LISHMAN. I have no further questions at this time.

The CHAIRMAN. Mr. Freedman, you understand the purpose is to assist the committee with the responsibility it has in connection with the investigation of the so-called quiz TV shows.

How old are you?

Mr. FREEDMAN. I am 37 years old.

The CHAIRMAN. You have testified to the general format and operations of these shows, "Twenty-one," "Tic-Tac-Dough," "Big Surprise." I am quite impressed with the ability that you have, and I want to compliment you for it. I think you know the show business.

Mr. FREEDMAN. Thank you, sir.

The CHAIRMAN. I think you know what it takes to entertain the public and to arouse the attention of the public. You have shown that to me in your knowledge of this business, the experience that you have had, and at your age I think it is quite a compliment to you.

Mr. FREEDMAN. Thank you, sir.

The CHAIRMAN. You have given a rather sordid experience that you had which in my humble judgment is rather unfortunate, because of the ability you have in this field.

Now, your testimony in connection with this matter, this whole program, is highly important, particularly in view of the experience that you have had, not only in connection with the shows themselves, but with what has occurred since.

Now, you have testified in connection with the "Twenty-one" TV shows you know, of your own knowledge, something about, that there were 125 or more contestants, and that some 15 to 20 had been given assistance in advance by you, and that of your own knowledge in some 50 percent or more of the total performances assistance had been given in advance, that is, some 50 percent of the very shows that have gone on. That is the general format and operation of the program.

I want to ask you just a few questions with reference to specific contestants.

Let us take first Mr. Stempel. He was the first witness. And you know who he is.

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. He testified that he received assistance. Did you give him assistance?

Mr. FREEDMAN. No, I didn't, sir.

The CHAIRMAN. Did you know that he did receive assistance?

Mr. FREEDMAN. At the time I assumed he was, yes.

The CHAIRMAN. Did you learn, following that, from your own knowledge, that he was given assistance?

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. Did you learn from what you knew about it that that assistance included something of the questions that were going to be asked and something of the answers that were to be given?

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. First I will ask you: You stated that you did interview all the contestants yourself. That was a rather long interview in connection with some of them, at least; is that not true?

Mr. FREEDMAN. I am sorry.

The CHAIRMAN. That was a rather long interview in connection with some of the contestants?

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. In other words, you had to be satisfied that they were rather intellectual individuals before they would be accepted for the show.

Mr. FREEDMAN. That is right.

The CHAIRMAN. In other words, they had to have some knowledge of such events.

Mr. FREEDMAN. I would like to say that to my knowledge every contestant that we had on "Twenty-one" was superior intellectually and had what I considered a vast knowledge and background of many subjects. I think this is without exception.

The CHAIRMAN. All right. Now, in this general format and general operation, you told each of the contestants as they appeared—of course they had to be advised of what the thing was all about and what they had to do. And you advised each of them about how to act, or to take their time, I believe. That was the general picture of all the contestants.

Mr. FREEDMAN. That is right.

The CHAIRMAN. You told all of them how to act, generally, did you not?

Mr. FREEDMAN. Yes, I did.

The CHAIRMAN. Even though I believe one of them today, Mr. Jackson, seemed to think he was pretty well versed in that field himself and he knew pretty much how to act. And he showed it pretty well, I think, from the kinescope we saw.

Now, did you also tell each of the contestants to rub their brow, you know, to show that they were under some stress and strain?

Mr. FREEDMAN. Well, I will tell you. I don't think I ever told any contestant to rub their brow, but it was a natural thing to do. It was so hot in that booth they automatically did it. They all automatically did it. They were all very intelligent.

The CHAIRMAN. Or not to rub across this way, but to pat themselves on the forehead?

Mr. FREEDMAN. That was said by Mr. Stempel, and as I said, I had nothing to do with Mr. Stempel.

The CHAIRMAN. Was there air conditioning in those booths?

Mr. FREEDMAN. Yes, sir, there was an air-conditioning unit in the booth. And I am sure this question has aroused some curiosity—why this air-conditioning unit was not on. And the reason is very simple: Because it made so much noise that it would drown out what the con-

testant was saying. Consequently, we couldn't put on the air-conditioning unit. We would only have it on before the show, to cool the booth. And it was unfortunate that the lights in the studio heated the booth to this extent.

The CHAIRMAN. It also served to make them warm, too, so they would perspire.

Mr. FREEDMAN. None of them complained. They lost weight very nicely.

The CHAIRMAN. Did you advise them or instruct them to bite their lips or make certain gestures and so forth?

Mr. FREEDMAN. Offhand, I am certain I did advise them as to gestures. I can't think of any biting lip thing, offhand. I can't think of any.

The CHAIRMAN. That just sort of catches on, as it goes on. Now, when you first started this show, and it got such a high rating or so much interest, did you start giving assistance right off?

Mr. FREEDMAN. Could I please go off the record, now, sir?

The CHAIRMAN. Yes.

(Discussion off the record.)

The CHAIRMAN. When you first went with the show, Mr. Stempel was one of the contestants?

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. And did you give Mr. Stempel assistance from the start?

Mr. FREEDMAN. No, sir.

The CHAIRMAN. How long after Mr. Stempel was on the show was it before you gave him assistance?

Mr. FREEDMAN. I am sorry, sir. Could I go off the record again?

The CHAIRMAN. I am just talking about Mr. Stempel again.

(Witness confers with his counsel.)

Mr. MURPHY. His question is: Did you ever give Mr. Stempel assistance?

Mr. FREEDMAN. I am sorry. I misunderstood your question. No, I never did.

The CHAIRMAN. You never found out about any assistance until later on you found out Mr. Enright had given assistance?

Mr. FREEDMAN. That is right.

The CHAIRMAN. Do you know of your own knowledge that Mr. Enright arranged for Mr. Stempel, in Mr. Stempel's own words, "to take a dive" at a certain time?

Mr. FREEDMAN. Yes, I knew of that.

The CHAIRMAN. You knew about it?

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. And that is when he lost?

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. Now, let us take the second one, Mr. Snodgrass. Mr. Snodgrass was on while you were a producer of the show?

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. You gave, I believe you testified, assistance yourself to Mr. Snodgrass.

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. In that assistance you not only advised him what to do, and so forth; you gave him assistance by questions and answers. Is that true?

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. Did you give him assistance by telling him how many points to select at a given time?

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. Did you know about the time that he answered the question correctly when he was supposed to have not answered it correctly?

Mr. FREEDMAN. I am sorry, sir. The question was: Did I know about the time?

The CHAIRMAN. He testified that he was to lose by giving an erroneous answer to a question, and he decided that he would doublecross you, and he gave the right answer to it.

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. You know about that? That part of his testimony is correct?

Mr. FREEDMAN. That is right.

The CHAIRMAN. Now, do you know about the lady, Miss Rose Leibbrand, who testified today?

Mr. FREEDMAN. Do I know about her?

The CHAIRMAN. Yes.

Mr. FREEDMAN. May I make a comment on her testimony?

The CHAIRMAN. Yes.

Mr. FREEDMAN. She mentions throughout Mr. Freedman as the producer. I had absolutely nothing to do with Miss Leibbrand. And it is very embarrassing to me, because I was not on the show when she named me. So this may be an indication of how close she is in her testimony, or how exact she is in her testimony. I wasn't on the show when she was on the show.

Mr. LISHMAN. Well, may I say something off the record?

(Discussion off the record.)

The CHAIRMAN. Back on the record.

I asked you about Miss Leibbrand, who testified today that she was on the show November 14, 1956. Were you with the show at that time?

Mr. FREEDMAN. To the best of my recollection, I was not the producer named by Miss Leibbrand.

The CHAIRMAN. Did you have anything to do with the show on that date?

Mr. FREEDMAN. I was, how shall I say, an observer with the show on that date. But I did nothing, or I was not a producer of the show, as of that date.

The CHAIRMAN. Then you yourself, you testify, had nothing to do with assistance for Miss Leibbrand?

Mr. FREEDMAN. That is right. To the best of my knowledge, I did not give her any assistance, at least the assistance she is talking about.

The CHAIRMAN. All right. Mr. Jackman; you remember Mr. Jackman?

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. Were you a producer at the time Mr. Jackman was a contestant?

Mr. FREEDMAN. On what show, sir?

The CHAIRMAN. "Twenty-one."

Mr. FREEDMAN. No, sir.

The CHAIRMAN. Therefore, any assistance that he may have received, you did not give to him, and neither do you know anything about it.

Mr. FREEDMAN. On "Twenty-one"?

The CHAIRMAN. Yes.

Mr. FREEDMAN. Well, I didn't give him any assistance on "Twenty-one."

The CHAIRMAN. All right. He stated that he was on "Tic-Tac-Dough."

Mr. FREEDMAN. Yes, sir; he was on "Tic-Tac-Dough."

The CHAIRMAN. Did you give him any assistance on that?

Mr. FREEDMAN. No, sir; I didn't give him any assistance.

Mr. DEROUNIAN. May I interject and tell the witness he testified just tonight that he became producer in November of 1956?

Mr. FREEDMAN. Yes, she was apparently on the show in November, but I told you I became producer after she was on the show, because I remember who she was. But I was not the full producer then. As I said, I just stood by.

Mr. LISHMAN. Forgetting your title, now.

Mr. FREEDMAN. As I answered to the best of my knowledge, I was not the one who gave any questions or answers or anything to Miss Leibbrand. I can't see myself doing it, because I was not the producer.

Mr. MACK. Mr. Freedman, in your coaching of the witnesses, I know you instructed them as to how to act at certain times, but did you give them instructions to breathe into the mike at certain times?

Mr. FREEDMAN. I may have.

Mr. MACK. To breathe heavily into the mike?

Mr. FREEDMAN. I may have. I am not sure. I really am not.

Mr. MACK. You cannot remember whether you gave any contestant such instructions?

Mr. FREEDMAN. I cannot, sir. I cannot truthfully say that I did.

Mr. MACK. Can I ask you if you ever had any financial interest in the Barry & Enright productions?

Mr. FREEDMAN. No, sir. By that you mean a percentage of the company or something? Is that what you mean?

Mr. MACK. Yes.

Mr. FREEDMAN. No.

Mr. MACK. I have one other question, and it is pertinent, of course, but I do not want to consume a lot of time. And if you could briefly tell us how you got the questions for the program, I would appreciate it.

Mr. FREEDMAN. How questions for the program were created? Is that what you mean?

Mr. MACK. How they became available to you and Mr. Enright, who seemed to have them before Mr. Barry.

Mr. FREEDMAN. Well—

Mr. MACK. And if it would not consume too much time, and the Chair would permit, I would like to know how you got the questions in the first place.

Mr. FREEDMAN. Mr. Mack, as producer of the show, one of my jobs, and a very important job, was to supervise the writing and the creation of questions for the, oh, approximately 100 different categories

we had on the show. Consequently, at all times I was well aware of the questions that were written and that were available.

Mr. MACK. Then you prepared the questions yourself on the show?

Mr. FREEDMAN. No. We had a staff whose only job was to do research and to prepare questions. But I supervised that, along with Mr. Enright.

Mr. MACK. Then for this coaching activity, or the assistance that you rendered, you had copies of the same questions which would be asked on a show by Mr. Barry?

Mr. FREEDMAN. That is right.

Mr. MACK. But you did not have the same cards that he used on his show?

Mr. FREEDMAN. No; I didn't.

Mr. MACK. Mr. Chairman, I have no further questions at this time.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS. Just one. About Miss Leibbrand, do you recall knowing her at all?

Mr. FREEDMAN. I recall the night that—this is 3 years ago, and my memory is very hazy. I do recall that she was one of the contestants on the show. I may have met her. I may have talked to her.

Mr. ROGERS. Do you recall asking her to take seven or eight? I read the testimony in the newspapers today, and she said something to the effect that some producer told her, "You can't take more than seven or eight," and she said, "But I can't win." And he said, "You better take seven or eight, or else."

Mr. FREEDMAN. This is a complete surprise to me. I can't imagine any producer talking like that. It is pretty stupid. And certainly it wasn't me. I didn't say that.

Mr. ROGERS. You spoke of the numbers, though, didn't you?

Mr. FREEDMAN. Just, "Seven or eight, or else," implying something disastrous was going to happen? No.

Mr. ROGERS. But you asked Mr. Snodgrass what he crossed you up for.

Mr. FREEDMAN. I never said, "or else." That is like threatening a person. That is ridiculous. No. But to get back to your original question, Mr. Rogers, I do not recollect ever having had anything to do with this woman outside of maybe talking to her or meeting her.

Mr. ROGERS. But you did tell the contestants to take certain numbers, so that they would get up to a certain point?

Mr. FREEDMAN. Yes, sir.

Mr. ROGERS. Did you tell them prior to the time, that they would be in a tie, that they had to take those numbers in order to get into a tie?

Mr. FREEDMAN. Well, the truth of the matter is I never told them very much. Sometimes they would not know whether—I can't recall every instance—whether there would be a tie or wouldn't be a tie. Sometimes I did. Sometimes I didn't.

Mr. ROGERS. You did tell them to ham it up, though, didn't you?

Mr. FREEDMAN. Well, that is not my expression. I said, "Be natural." You know, a ham is very obvious. I said, "Be yourself." If you start hamming, you antagonize people by hamming. But if you are natural, it is much more believable. I never told anybody to ham, to ham it up.

Mr. ROGERS. That is all, Mr. Chairman.

Mr. SPRINGER. Mr. Freedman, how long have you been in the business?

Mr. FREEDMAN. Almost 10 years, sir.

Mr. SPRINGER. What is your age?

Mr. FREEDMAN. Thirty-seven years old.

Mr. SPRINGER. How long have you known Mr. Enright?

Mr. FREEDMAN. Four years.

Mr. SPRINGER. You have known him only since you became associated with Barry & Enright Productions; is that correct?

Mr. FREEDMAN. Yes, sir.

Mr. SPRINGER. After the grand jury investigation was announced, roughly how many contestants did you contact prior to their appearance before that body?

Mr. FREEDMAN. It is very hard for me to say. I would assume maybe—well, I would say as many as I could, sir. Probably 10 to 15. (Discussion off the record.)

Mr. SPRINGER. Did you contact Mr. Charles Van Doren prior to his appearance before the grand jury?

(Witness confers with counsel.)

The CHAIRMAN. On the record.

Did you talk to some of the contestants before you went to the grand jury, who were not given any assistance?

Mr. FREEDMAN. Did I talk to some of the contestants before I went to the grand jury? Yes, I suppose—yes, I did. Let me see. Yes, I did.

The CHAIRMAN. Now, with that, would you not answer Mr. Springer's question?

Mr. FREEDMAN. You also wanted to know whether I had spoken to Mr. Van Doren before he went to the grand jury? No.

The CHAIRMAN. Did you talk to him before he went to the district attorney's office?

Mr. FREEDMAN. Yes.

Mr. SPRINGER. When did you go to Mexico City?

Mr. FREEDMAN. I went to Mexico City—I left my home in June.

Mr. SPRINGER. Do you remember the date?

Mr. FREEDMAN. Yes; we left the end of June. We drove by car with my children and my wife.

Mr. SPRINGER. What was your purpose in going to Mexico City?

Mr. FREEDMAN. I am glad you asked that question, Mr. Springer, because the purpose was the following: I could not find a job in my industry in the United States as a result of the investigation a year ago, especially in view of my indictment. In order to support my family, in order to have a little self-respect, a man has to work. I decided to look for work in Mexico, where my wife used to work, and where we have friends, where I would be able to do some writing, where I will not be haunted by the unfortunate events of the last year. I hope that we will be able to make a life for ourselves there.

Well, that is—

Mr. SPRINGER. Mr. Freedman, when did you go off the payroll of Barry & Enright?

Mr. FREEDMAN. I went off their payroll in the fall. When I went off the show.

Mr. SPRINGER. The end of September 1958?

Mr. FREEDMAN. It was the end of September 1958.

Mr. SPRINGER. Were you employed thereafter?

Mr. FREEDMAN. Well, I did a little writing, a little work on the side. Financially, I was helped by Mr. Enright. I sincerely hope that—I know I will be able to repay him as soon as I am gainfully employed again and making enough money to pay him back.

Mr. SPRINGER. Mr. Freedman, how much money has Mr. Enright advanced to you since you left Barry & Enright, in November 1958?

Mr. FREEDMAN. Oh, approximately around \$15,000. I am not quite sure, but approximately that.

Mr. SPRINGER. Has that been in regular monthly payments?

Mr. FREEDMAN. No. Whenever I needed the money, whenever I ran out of money, we—

Mr. SPRINGER. You have written or contacted Mr. Enright, and he supplied you with funds?

Mr. FREEDMAN. Well, yes. He has written to me, or I don't know how it is, but several times during the year when I ran short of money, he provided the money. As I say, I intend to and I will pay him back.

Mr. SPRINGER. Mr. Freedman, you took your family to Mexico and have been supporting yourself ever since solely with money supplied by Mr. Enright; is that correct?

Mr. FREEDMAN. Yes, sir.

Mr. SPRINGER. In the course of your contact and conversations with Mr. Enright, did he encourage you to go outside the country?

Mr. FREEDMAN. No; never.

Mr. SPRINGER. He never did?

Mr. FREEDMAN. I would say he was sorry to see me go to Mexico; it was unfortunate that I had to go, and at no time did he ever tell me to leave the country. That was my decision.

Mr. SPRINGER. During this time, after you were indicted, Mr. Freedman, you were attempting to evade service and arrest; were you not?

Mr. FREEDMAN. I am sorry. What is that, again?

Mr. SPRINGER. After the indictment, were you seeking to evade being tried?

Mr. FREEDMAN. Was I seeking to evade being tried in court?

Mr. SPRINGER. Being tried in court.

Mr. FREEDMAN. I certainly was not. I don't understand the question. Was there ever any implication that I—

(The question referred to was read by the reporter.)

Mr. FREEDMAN. No, sir.

(Witness confers with his counsel.)

Mr. FREEDMAN. No, of course not.

Mr. SPRINGER. You later returned before the grand jury and did purge yourself?

Mr. FREEDMAN. That is right.

Mr. SPRINGER. And at the present time there is no plan to try you for perjury in the State of New York; is that correct?

Mr. FREEDMAN. Yes, sir.

Mr. SPRINGER. You have been assured that if you testify truthfully in these matters before this subcommittee and cooperate in any further use that the district attorney has of you, you will not be tried on that indictment; is that true?

Mr. FREEDMAN. Yes, I assume so. Yes.

Mr. SPRINGER. Mr. Freedman, it is largely a rumor, very widely a rumor, that in this whole matter you have been the fall guy. You know what a fall guy is, do you not?

Mr. FREEDMAN. Well, I have heard that myself, sir. I don't think I have been a fall guy. I think I have been involved in what has been a most unfortunate experience. I have admitted to making many mistakes. We have made many mistakes. I really don't come here for your sympathy. I come here to help you in any way I can, regarding myself, only asking you not to injure the reputations of the many, many people who have been on "Twenty-one."

As for my being a fall guy, I am not. I have not been.

Mr. SPRINGER. Mr. Freedman, at the time the grand jury was getting ready to convene, is it true that you had several conversations with Mr. Enright as to what you were going to say if you were called before the grand jury?

Mr. FREEDMAN. Yes.

Mr. SPRINGER. And you told Mr. Enright you were going to say that these programs were not fixed; is that correct?

Mr. FREEDMAN. I told him—well, all of us were in this boat together.

Mr. SPRINGER. Just answer the question. Did you, yes or no? And if you want to qualify it, you may.

Mr. FREEDMAN. I think to the best of my knowledge I told him how I felt, of my decision. I think I told him of my decision.

Mr. SPRINGER. That you were going to testify that the programs that you had anything to do with were not fixed?

Mr. FREEDMAN. Mr. Springer, I had mentioned before the three reasons why I had been brought into this.

Mr. SPRINGER. Did Mr. Enright tell you how he was going to testify before the grand jury?

Mr. FREEDMAN. Well, I will tell you this. He had discussed it. I had known of his thinking on the matter. Since he did not appear before the grand jury, I cannot—

Mr. SPRINGER. Will you strike that answer and be responsive? Read the question back to him, Mr. Reporter.

(The question referred to was read by the reporter.)

Mr. FREEDMAN. Well, he had discussed it with me. He didn't tell me, "I am going to say such-and-such to the grand jury," no. But he had discussed his feelings to me.

Mr. SPRINGER. All right. What was his feeling about testifying before the grand jury?

Mr. FREEDMAN. I don't want to be impertinent, Mr. Springer, but since Mr. Enright is here tonight, I would appreciate—

Mr. SPRINGER. I am not asking Mr. Enright. I am asking you, Mr. Freedman, what Mr. Enright's feeling was about testifying before the grand jury, and how he was going to testify.

Mr. FREEDMAN. Well, to the best of my knowledge, his feelings were basically the feelings that I had, too. He wanted to protect the people working in his organization. He wanted to keep the shows on the air. And he wanted to protect the reputations of the contestants on the show.

Mr. SPRINGER. A reasonable inference, then, Mr. Freedman, was that Mr. Enright was going to give testimony similar to yours?

Mr. FREEDMAN. I really can't make that inference, because at no time did he say, "I am going to testify such-and-such." He had dis-

cussed it. I can only give you my feelings as to his discussions. But at no time, at least that I can remember, did he say, "I am going to say so-and-so to the grand jury."

Mr. SPRINGER. Your understanding, as I take it, from the answers to my questions, is that due to the fact that he wanted to protect the production and protect the people in it, he was going to give testimony similar to yours.

Mr. FREEDMAN. Those were his feelings on the matter. But as to what he would have done had he appeared before the grand jury, I really—I just can't take it upon myself to say he would have done such-and-such.

Mr. SPRINGER. Did you appear before the grand jury before Mr. Enright refused to sign a waiver of immunity?

Mr. FREEDMAN. Oh, yes, sir.

Mr. SPRINGER. You did?

Mr. FREEDMAN. Yes, sir.

Mr. SPRINGER. Who was attorney for Enright at that time?

Mr. FREEDMAN. The attorney for Mr. Enright at the time of the grand jury investigation?

Mr. SPRINGER. Yes, sir.

Mr. FREEDMAN. It was to my understanding Mr. Myron Green. Yes.

Am I right?

Mr. SPRINGER. Were you present at any conversations that Mr. Green had with Mr. Enright with reference to testifying before the grand jury?

Mr. FREEDMAN. Whose testifying before the grand jury?

Mr. SPRINGER. Either of you.

Mr. FREEDMAN. I had been asked a similar question in the grand jury, and I had been led to believe that any conversation that I had with an attorney or my testifying before the grand jury——

Mr. SPRINGER. I think the question is very plain.

(The question referred to was read by the reporter.)

Mr. FREEDMAN. Mr. Springer, you mean regarding my testimony before the grand jury?

Mr. SPRINGER. Regarding either of you.

Mr. FREEDMAN. Yes, I was.

Mr. SPRINGER. On how many occasions?

Mr. FREEDMAN. I really can't remember. But I am almost sure I was.

Mr. SPRINGER. Can you remember on those occasions whether or not you were advised that you should testify that these programs were not fixed?

Mr. FREEDMAN. No. I was never advised by any lawyer to give that type of evidence to the grand jury.

Mr. SPRINGER. On those occasions did Mr. Green advise you and Mr. Enright that if you told the truth before the grand jury there would be no criminal liability under either State or Federal law?

Mr. FREEDMAN. If I testified to the grand jury there was no liability——

Mr. SPRINGER. Would you read the question, Mr. Reporter?

(The question referred to was read by the reporter.)

Mr. FREEDMAN. Well, offhand, I can't remember that segment of the conversation. I can't remember that as far as the liability. It may have happened, but I really can't offhand recollect.

Mr. SPRINGER. Mr. Freedman, you testified that you told some contestants what the scores would be and when there would be ties. Is it not fair, in your experience, to assume that you did not give a contestant this information unless both contestants had been told what to do and both had been assisted?

Mr. FREEDMAN. No, sir. No.

Mr. SPRINGER. Did you understand that?

Mr. FREEDMAN. Well—excuse me.

(Witness confers with his counsel.)

Mr. FREEDMAN. The answer to that question is "No."

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Flynt?

Mr. FLYNT. How long did you work as producer after NBC bought "Twenty-one"?

Mr. FREEDMAN. How long was I producer of "Twenty-one" after?

Mr. FLYNT. After NBC bought it.

Mr. FREEDMAN. I was producer before NBC bought the show.

Mr. FLYNT. I know. But how long were you producer afterward?

Mr. FREEDMAN. I was producer until the end of September 1958.

Mr. FLYNT. Did anybody from NBC ever ask you whether any of the contestants were furnished questions and answers prior to appearance on the program?

Mr. FREEDMAN. Did anybody from NBC? I don't recollect any official of NBC asking me. There is no one who ever asked me that I know of.

Mr. FLYNT. Do you remember when Mr. Stempel first made his charges?

Mr. FREEDMAN. The first I heard about the Stempel charges was when I understood he went to the New York Post sometime—I am not sure about the dates—sometimes in the spring of 1957. And that is the first time I heard about his charges. OK. That is the time I heard of his charges.

Mr. FLYNT. Was it right after that that NBC bought "Twenty-one" from Mr. Barry and Mr. Enright?

Mr. FREEDMAN. As far as the dates are concerned, I really am a little hazy. NBC, I think, bought the show some time in the spring of 1957.

Mr. LISHMAN. May 2, 1957.

Mr. FREEDMAN. I think the Stempel charges came out before then. That would be the best of my recollection.

Mr. FLYNT. All right. How soon did they buy the "Twenty-one" program after Mr. Herbert Stempel made his charges of fraud?

Mr. FREEDMAN. Let me see. If Stempel made his charges around—well, he didn't make it to NBC. He made it to the New York Post.

Mr. FLYNT. But he made his charges public.

Mr. FREEDMAN. I would say 2 months, from March to May.

Mr. FLYNT. When were you first advised that there was to be a change in ownership of the program?

Mr. FREEDMAN. Well, after the discussions. When the discussions were underway, I knew that there was a possibility of NBC buying the show.

Mr. FLYNT. After what discussions were underway?

Mr. FREEDMAN. Discussions between Barry & Enright and NBC.

Mr. FLYNT. Was there any connection between those discussions and the charges made by Mr. Stempel?

Mr. FREEDMAN. Not to my knowledge. Any connection between? No.

Mr. FLYNT. If anybody from NBC had asked you about that time were the contestants furnished questions and answers and otherwise coached, what would you have told them?

Mr. FREEDMAN. I suppose I can only give you a conjecture at this time. I suppose I would not have admitted to it. I would probably have said no.

Mr. FLYNT. Did you ever become convinced in your own mind that the presentation of a program such as this was deceiving the viewing and listening audience?

Mr. FREEDMAN. Well, you know, I have been thinking a lot about that in the past year. It is a very difficult question for me to answer. I can only—I will try to answer it in this way. That in context of putting on a good show, in the context of trying to do the best job you can, I felt during the time that I was producing "Twenty-one" that I wasn't, or we weren't, harming anybody.

Mr. FLYNT. Did you feel that you were—

Mr. FREEDMAN. These were just thoughts. I wanted to clarify my thoughts. At that time, during the time that "Twenty-one" was on, I couldn't think of—we were not creating harm as far as I could see then to anyone. We were providing the network with a top rated show. We were providing the agency and the sponsor with a show that sold his product. So the network was happy, the sponsor was happy. The contestants, many of whose lives were changed, were happy in this, and the audience, who used to watch our show week after week, from letters we got, they were very happy.

It seems that everybody seemed to be happy in this whole deal. And at that time I could not see that I was hurting anybody, that we were destroying or hurting any human beings.

Over the past year, as a result of all that has happened, people have been hurt—contestants, people working in our organization, have been very hurt. Reputations have been hurt. And as a result of what has happened, my thinking has changed from what it was last year.

Mr. FLYNT. Well, now, what hurt those reputations? The fact that a fraudulent show was being put on? Or the fact that the truth has been brought out now? Which did it?

Mr. FREEDMAN. I am sorry.

Mr. FLYNT. You say some reputations have been damaged. Now, what damaged those reputations? The presentation of a fraudulent program? Or the development of the truth?

Mr. FREEDMAN. I can only answer that by saying that all contestants have been smeared, whether they are guilty or innocent. That is the unfortunate aspect of it. It is something I guess over which no one has any control. I am sorry.

Mr. FLYNT. This program that you produced was held out as a bona fide test of knowledge; is that correct?

Mr. FREEDMAN. Yes, sir.

Mr. FLYNT. What about the announcers that participated on it? Did they know anything about it?

Mr. FREEDMAN. No, sir. Not to my knowledge.

Mr. FLYNT. Now, are you familiar with the statement of Mr. Barry, which was read into the record today by Mr. Irwin, in which, on one of the final nights, perhaps the final night, of the presentation of "Twenty-one," in which he said that any charges that any contestant had ever been coached or furnished questions and answers were entirely false, or substantially that? And then he said, "I want to emphasize and repeat that they were entirely false." Was that a correct statement?

Mr. FREEDMAN. No. Mr. Barry—I can only answer it this way. At no time did I ever discuss or tell Mr. Barry anything of the operation of the show. The statement that Mr. Barry read—well, I had nothing to do with that statement. And I think Mr. Enright would be the person who could discuss that statement better than I. I still think Mr. Enright would be better qualified to discuss that particular statement.

Mr. FLYNT. Were you the producer at that time?

Mr. FREEDMAN. Yes, sir; I was the producer.

Mr. FLYNT. Did you see the statement in advance of its being read over television?

Mr. FREEDMAN. I think I did, sir.

Mr. FLYNT. Did you make any comment, or simply remain mute?

Mr. FREEDMAN. I remained mute.

Mr. FLYNT. Even though you were the producer of the program?

Mr. FREEDMAN. Yes, sir.

Mr. FLYNT. And you knew that a statement was being made of which you had advance knowledge?

Mr. FREEDMAN. Yes, sir.

Mr. FLYNT. And did you know that the statement of Mr. Barry was false?

Mr. FREEDMAN. My actions during those days, I have told the committee—my actions, and I guess the actions of other people associated in this program, were not rational. Now I can see things in a much clearer light. At that time—when you are very frightened, you often do things that you later regret and you regret very, very much. It certainly has changed my life.

Mr. FLYNT. Let me ask you this, since you have answered it that way. When did you first become frightened over the manner in which this program was being presented? And by that I will ask you this, so that you can be thinking about this in making the answer. Did that feeling of fright develop gradually, or did the feeling of fright and panic develop only when the grand jury and the district attorney began to inquire into it?

Mr. FREEDMAN. The latter, sir.

Mr. FLYNT. In other words, until the district attorney's office took jurisdiction of it, every other act that you did was not inspired by fright or panic?

Mr. FREEDMAN. No, sir. To be very honest, no.

Mr. FLYNT. In other words, the fact that the district attorney's office came in brought the feeling of panic and apprehension?

Mr. FREEDMAN. Well, I saw the whole—when there were so many factors in jeopardy, the show, the jobs, contestants, my future, everything, I guess I understand now why I was in panic.

Mr. DEVINE. Mr. Chairman?

Mr. FREEDMAN. I am speaking in generalities, now. All these contestants that you did assist by giving questions and answers to—did any of them in your experience as producer of this show ever refuse to go on the show?

Mr. FREEDMAN. No, sir. I can't remember any instance.

Mr. DEVINE. Now, let us talk about mechanics for just a minute. These category cards are apparently concealed behind something on a rostrum. And Jack Barry jerks them out or something or other. What is the mechanical setup?

Mr. FREEDMAN. It is a box where each category is in order, is in place.

Mr. DEVINE. Who places those cards in there? Who did when you were producer?

Mr. FREEDMAN. My assistant, Miss Rader. I told her the categories to be placed, the cards and categories, and she followed my instructions and put them in the box.

Mr. DEVINE. Are all categories placed in the box?

Mr. FREEDMAN. The categories that stand by for the evening of the show, yes.

Mr. DEVINE. You selected the categories, then, the cards that were to go in the box; is that right?

Mr. FREEDMAN. Mr. Enright and I selected the categories.

Mr. DEVINE. Did Mr. Barry know what those were?

Mr. FREEDMAN. Mr. Barry—yes, he read over the questions before the show, just so he would know how to pronounce anything that may be difficult, any name that may be difficult, and so forth. So he read the questions so that there would be no difficulty.

Mr. DEVINE. He knew what would be coming out of the box, then?

Mr. FREEDMAN. Yes.

Mr. DEVINE. Would he know the order in which they were coming?

Mr. FREEDMAN. No, I don't think so. He glanced over the questions.

Mr. DEVINE. During all the time that you were the producer of this show, did it ever run overtime?

Mr. FREEDMAN. Oh, yes. We had a show where we had to stop. We had times where we had to stretch and other times where we ran overtime, to my knowledge.

Mr. DEVINE. Did that happen frequently?

Mr. FREEDMAN. No, I don't think so.

Mr. DEVINE. Your answer is "No"?

Mr. FREEDMAN. No. I can't remember.

Mr. DEVINE. Do you know whether Mr. Barry had any knowledge of any advance information?

Mr. FREEDMAN. To the best of my knowledge, he didn't. I didn't tell him as to the mechanics of the show. As to what he understood about the show, I don't know. I never really discussed it with Mr. Barry.

Mr. DEVINE. Did he know in advance at what point number a contestant would elect to stop?

Mr. FREEDMAN. No, he had no idea.

Mr. DEVINE. That is all.

Mr. SPRINGER. Mr. Freedman, after you talked with Mr. Van Doren prior to his appearance before the grand jury, did you report the conversation to Mr. Enright?

Mr. FREEDMAN. I don't know. I think I did, yes.

Mr. LISHMAN. I had one question.

Mr. Freedman, after you had finished testifying before the grand jury the second time, did you report back to Mr. Enright and tell him the substance of what you had testified to before the grand jury?

Mr. FREEDMAN. I think I did, yes.

Mr. LISHMAN. Did you tell him—

Mr. FREEDMAN. I didn't report back. No. When I met him—I don't remember when it was, but I did tell him in substance. Excuse me. He knew I was going back.

Mr. LISHMAN. Did you tell him that you had testified before the grand jury and named names of contestants to whom you had given the questions and answers in advance on "Twenty-one"?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. I have no more questions.

The CHAIRMAN. Mr. Freedman, on behalf of the committee, I want to thank you for your appearance here and your testimony. Now, we have several other witnesses who are scheduled to appear, including witnesses on the other show, which you had a lot to do with.

Mr. FREEDMAN. Mr. Chairman, I really worked a very short time on this other show. My contact was not with contestants. It was such a brief period that I just did writing with the show. And the brief episodes that I had mentioned were very inadvertent. It was not my normal duty. So I know very little of the operation of that show, because I had been on the show for such a brief period.

The CHAIRMAN. Well, we have a good many witnesses here that are scheduled. And they are witnesses who requested to be heard. Now, in view of this, and since you have been cooperative, I feel justified, on behalf of the committee, to ask you to wait until we do conclude and see if there are questions that would be appropriate.

Mr. FREEDMAN. Mr. Chairman, I plead—

The CHAIRMAN. I think that is in keeping with the procedure with reference to these hearings.

Mr. FREEDMAN. Excuse me. What show are you referring to now?

The CHAIRMAN. I am referring to other witnesses that are to appear in connection with these hearings.

Mr. FREEDMAN. On what show, sir? Could I ask you what show it is, Mr. Chairman?

The CHAIRMAN. We are now, of course, and have been for 2 days, on "Twenty-one." And we have got some other shows we have not gotten to yet, some of which you testified to here tonight.

Now, I know you are anxious to get back home.

Mr. FREEDMAN. I am very anxious. I have been away for a week.

The CHAIRMAN. Yes. I know. And we have tried every way to get in touch with you, too, during that week. And if you had been

as cooperative during that week as you have today, we could have expedited this a great deal.

Mr. FREEDMAN. My wife and children are by themselves, and I would really appreciate answering any questions—If there is anything else, I really would. I feel that the main part of my job was—I spent most of my time with “Twenty-one” and I feel I have told you everything that you have wanted to know on this show.

The CHAIRMAN. It is entirely possible that we might need some more questions on “Twenty-one.” That is the point.

Mr. FREEDMAN. Well, could I go back to Mexico City, and then you could call me back if you need me? I would appreciate that very much. I came up here as a volunteer, Mr. Chairman, and I would appreciate it, if I had your cooperation, to stay with my family.

The CHAIRMAN. Well, you are receiving our cooperation, and we are asking yours in the spirit of the procedure that has been a part of these hearings.

Now, Mr. Murphy, I would like to say to you, as his counsel, under the circumstances, that the members of the committee have expressed a desire for Mr. Freedman to be available with appropriate questions under the procedure in connection with these hearings. Now, I cannot see why, in view of the fact that Mr. Freedman has been here a week, and we have been trying to locate him and we have been unable to do so—why he should be at this time in such a hurry to leave before we complete this job. We are going to conclude these hearings Friday, if we have to have more late night sessions. And I do not like to stay here this late, very frankly.

Mr. MURPHY. I think Mr. Freedman has been available at least since Monday at any time the committee wanted him, and I believe this has been known to the committee staff.

The CHAIRMAN. I will say for your own knowledge that Mr. Freedman has not been available to this committee until this morning.

Mr. MURPHY. Sir, Mr. Freedman, as I understand it, agreed that he would come on Monday if it was wanted to take his testimony on Monday; that he would come on Monday evening if it was wanted to take his testimony on Monday evening; and on Tuesday evening if his testimony was wanted then; on this evening, when he is here. I was going to say, sir, that you are as fully apprised of his situation as I am. His wife and two small daughters are in Mexico City by themselves. He has been away from them a week. He says he is anxious to get back to them. He has asked if it might be if further questions were asked of him that he might return if he were asked to come back.

The CHAIRMAN. Well, now, under the procedure, which you and I have discussed as late as this morning, it would seem to me if there are any other questions—and obviously there could be; I do not say there are. I applaud Mr. Freedman’s willingness to be helpful, as he has, under the circumstances. In doing so, I think he should be willing to be helpful until we all do that job that we have been responsible for. And I certainly do not think that is an unreasonable request.

Mr. FREEDMAN. Mr. Harris, I want to cooperate with the committee to the fullest extent. I hope I have cooperated this evening. I haven’t kept anything back. When the committee staff contacted my attorney, they knew very well that I did not have to come down here.

And to be very honest with you, I was very reluctant. I didn't have to. I have suffered enough during this last year. Believe me, I have suffered tremendously. I couldn't find work. I would appreciate this being off the record.

(Discussion off the record.)

Mr. LISHMAN. Mr. Freedman, in answering some questions of Mr. Springer, am I correct in understanding your testimony to be that in no instance where you offered to furnish advance questions and answers to a contestant was it refused?

Mr. FREEDMAN. That's right.

Mr. LISHMAN. But is it also a fact that on some occasions some of these contestants to whom you made this offer initially refused to go along with that?

Mr. FREEDMAN. They were reluctant to.

Mr. LISHMAN. And did you attempt to persuade them by appeals to considerations other than monetary rewards?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. Did you appeal to their altruistic motives, in that they would have the opportunity on a national network to set forth certain messages to the American people which would help them either in their educational pursuits or help them in their medical troubles and so on?

(Discussion off the record.)

Mr. LISHMAN. I will rephrase it. Did you offer them the inducement or the altruistic purpose that they could serve in advancing the cause of humanity in various lines of endeavor, and in which you knew the contestants were especially interested?

Mr. FREEDMAN. This was one of the considerations I had mentioned to several. It was taken into consideration. But I am not a supersalesman. I didn't club anybody over the head.

Mr. LISHMAN. Did you tell them that they could advance causes in which they were interested for the good of mankind by appearing on this program?

I will rephrase it. Did you offer as inducements the opportunity to certain of these contestants that if they appeared they would be able to advance worthy causes for the benefit of mankind? Worthy causes?

(Discussion off the record.)

Mr. LISHMAN. Mr. Chairman, I am trying to show that all kinds of appeals to the best instincts of people were used to get them on this program.

Mr. GOODWIN. They were refused in some instances on more than one occasion. And this gentleman here before us repeatedly went back to them and tempted them with these altruistic baits. And I do not think that should be left out of our record.

(Discussion off the record.)

The CHAIRMAN. Were there inducements offered to contestants that would appeal to them in the furtherance of knowledge, information, and assistance to the people?

Mr. FREEDMAN. Yes, sir.

Mr. LISHMAN. And did you use that type of appeal to them in order to overcome their scruples against engaging in receipt of advance questions and answers from you?

Mr. FREEDMAN. I would like to have that over again.

(The question referred to was read by the reporter.)

Mr. FREEDMAN. Yes.

Mr. LISHMAN. Did you also tell these contestants that, after all, this was only entertainment and everybody was doing it?

Mr. FREEDMAN. I may have said that; yes, sir.

The CHAIRMAN. Thank you very much. You can stand aside.

Mr. ENRIGHT?

Will you be sworn?

Do you solemnly swear the testimony you give to this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ENRIGHT. I do.

The CHAIRMAN. You may have a seat.

State your full name, Mr. Enright.

TESTIMONY OF DANIEL ENRIGHT; ACCOMPANIED BY HIS COUNSEL, CHARLES MURPHY

Mr. ENRIGHT. My full name is Daniel Enright.

The CHAIRMAN. And your address?

Mr. ENRIGHT. 19 Colvin Road, Scarsdale, N.Y.

The CHAIRMAN. And what is your business or profession?

Mr. ENRIGHT. Well, I am a producer of television programs.

The CHAIRMAN. Mr. Lishman, would you care to proceed with this?

Mr. LISHMAN. Mr. Enright, how long were you the producer for the show "Twenty-one"?

Mr. ENRIGHT. I was supervisor-producer from its inception until its demise.

Mr. LISHMAN. And what period of time did that cover?

Mr. ENRIGHT. September, 1956, to October, 1958.

Mr. LISHMAN. Mr. Enright, Mr. Freedman has just testified, and you were here while he was testifying, and he stated that after the second time that he had appeared before the New York County grand jury, he had come back to you and told you the substance of his testimony before the grand jury and had told you that he had given the names of contestants to whom he had given in advance questions and answers.

Mr. ENRIGHT. That is right.

Mr. LISHMAN. Was his testimony before the grand jury true and correct?

Mr. ENRIGHT. I cannot tell you, sir, because actually I don't recall what he testified to. The general impression was that he testified to the truth. And I can't verify what his testimony was.

Mr. LISHMAN. Could we go off the record?

(Discussion off the record.)

Mr. LISHMAN. To the best of your knowledge, was the statement made to you by Mr. Freedman concerning the substance of his testimony before the grand jury true?

Mr. ENRIGHT. To the best of my knowledge.

Mr. LISHMAN. Now, was it your idea to fix these contestants on "Twenty-one"?

Mr. ENRIGHT. What contestants are you referring to? Can we specify them by name?

Mr. LISHMAN. Well, Mr. Freedman has testified that when he first came, as producer, to "Twenty-one," he just went ahead furnishing questions and answers in advance to the contestants, on the assumption that that was the way the show should be run. Now, that would seem to me, for a new employee, to be a very large assumption. And I must say that, or suggest, that someone in authority must have told him to do that. Did you tell him to do it?

Mr. ENRIGHT. Well, this has been a subject of debate or discussion between Mr. Freedman and me for the past six months, as to who initiated the idea between us. And frankly, none of us have a recollection. To me it doesn't matter. For the sake of the record, and just to minimize time, I will assume responsibility for it.

Mr. LISHMAN. Was it your idea originally, when the show started, that this practice should be engaged in?

Mr. ENRIGHT. It was my decision to engage in this practice, sir.

Mr. LISHMAN. Did you furnish questions and answers in advance to Mr. Stempel?

Mr. ENRIGHT. I did.

Mr. LISHMAN. Did you furnish questions and answers in advance to Mr. Jackman?

Mr. ENRIGHT. I did.

Mr. LISHMAN. Did you furnish questions and answers in advance to other contestants?

Mr. ENRIGHT. One or two more, to the best of my recollection.

Mr. LISHMAN. Did you coach them on how to act when they appeared on the program?

Mr. ENRIGHT. I did.

Mr. LISHMAN. And have you had the opportunity of reading the testimony of the witness Stempel?

Mr. ENRIGHT. Yes, I did.

Mr. LISHMAN. And is his testimony concerning how he was coached accurate?

Mr. ENRIGHT. To the best of my recollection, yes.

Mr. LISHMAN. And is that same thing true of the other contestants who have testified concerning coaching by you?

Mr. ENRIGHT. Well, the only other contestant I recall who testified was Jackman. To the best of my recollection, I did give Jackman questions and answers in advance. I told him what numbers to choose in advance. To the best of my recollection, I told him what mannerisms to use.

Mr. LISHMAN. Why did you give Mr. Jackman \$15,000, instead of the announced winnings of \$24,500?

Mr. ENRIGHT. I can only attribute it to stupidity and indiscretion. Mr. Jackman appeared at my office after he had been on the show, and told me that he preferred to go off the show. And there was discussion of moneys between us. I urged him to take this sum of money, because I told him it was his money. He didn't want to take that amount of money. And then, as I recall, he suggested that he would take \$15,000. And very stupidly, I agreed to it.

Mr. LISHMAN. Why was that stupid?

Mr. ENRIGHT. Why? Because he had reached the sum of \$24,500. The records called for him to receive \$24,500. It creates embarrassment and obviously cast reflections on me, in that he had received less than was announced.

Mr. LISHMAN. Mr. Enright, did you have occasion to have meetings with Mr. Rosenhouse from time to time?

Mr. ENRIGHT. Yes, sir. And, Mr. Lishman, may I amplify my former statement, to the effect that of the \$24,500 which was supposedly awarded to Mr. Jackman, he retained \$15,000, and the balance of the money was retained by the sponsor. It was not retained by any of us.

I am sorry, sir. May I have your question regarding Mr. Rosenhouse?

Mr. LISHMAN. From time to time would you have meetings either at lunch, dinner, or at other times, with Mr. Rosenhouse?

Mr. ENRIGHT. Not frequently, no.

Mr. LISHMAN. I said from time to time.

Mr. ENRIGHT. Very infrequently. Very infrequently.

Mr. LISHMAN. And who was Mr. Rosenhouse?

Mr. ENRIGHT. Mr. Rosenhouse was the president of Pharmaceuticals, Inc.

Mr. LISHMAN. And did you have discussions with Mr. Rosenhouse as to the contestants on the TV quiz show "Twenty-one"?

Mr. ENRIGHT. I don't recall any such discussions.

Mr. LISHMAN. Did Mr. Rosenhouse indicate to you what contestants the sponsor desired to be continued on the program?

Mr. ENRIGHT. No; never.

Mr. LISHMAN. At no time?

Mr. ENRIGHT. Never did Mr. Rosenhouse so indicate.

Mr. LISHMAN. Did you have any meetings with Mr. Kletter?

Mr. ENRIGHT. Yes, I used to meet with Mr. Kletter or speak on the phone with him.

Mr. LISHMAN. Did either Mr. Rosenhouse or Mr. Kletter ever say to you words to the effect, "I hope that so-and-so who is now on the program, will continue on for some time. They seem to have great audience appeal"? Or words to that effect?

Mr. ENRIGHT. I don't recall Mr. Rosenhouse ever saying it.

Mr. LISHMAN. Did Mr. Kletter ever say it?

Mr. ENRIGHT. He might have, yes. I don't recall specifically.

Mr. LISHMAN. He has so testified.

Mr. ENRIGHT. Well, then, I would have to go by his testimony. You are asking me for my testimony, Mr. Lishman. And the best I can say is that he might have. I am not denying it.

Mr. LISHMAN. Would you take into consideration the wishes of the sponsor in this regard, in regard to conducting these so-called contests of knowledge?

Mr. ENRIGHT. I might take them into consideration, but they would not serve as the determining decision.

Mr. LISHMAN. Well, what criteria did you use when you decided that a certain contestant should stay on the program?

Mr. ENRIGHT. The appeal of the contestant to the audience, the excitement that that particular contestant could generate.

Mr. LISHMAN. Did the ratings have anything to do with it?

Mr. ENRIGHT. The ratings were an offshoot of that. Presumably if you were to produce a good show, an entertaining show, you would have a higher rating.

Mr. LISHMAN. What criteria did you use when you decided that a certain contestant should be taken off the program?

Mr. ENRIGHT. Mainly that he had outworn his attractiveness as a contestant, his appeal as a contestant.

Mr. LISHMAN. Well, in the case of Mr. Snodgrass, was that the reason why you took him off the program?

Mr. ENRIGHT. I am trying to answer it, sir. May I go off the record and explain why it was done? Then you can determine what the problem is.

Mr. LISHMAN. Well, is your answer going to involve someone else?

Mr. ENRIGHT. Can I go off the record, sir? And you decide.

Mr. LISHMAN. I will ask the chairman.

The CHAIRMAN. All right. You may.

(Discussion off the record.)

Mr. LISHMAN. What were the criteria other than the ones that you have described, for removing contestants from the program?

Mr. ENRIGHT. A contestant might be brought on the program for the purpose of tying with an incumbent contestant, and it would be determined that he would play a certain number of games, at the end of which he would lose, or at the end of which the incumbent might lose.

Mr. LISHMAN. If a contestant refused to follow his advance instructions, would that be a ground for removing him from a program?

Mr. ENRIGHT. I never recall that happening, sir.

Mr. LISHMAN. Except in the case of Snodgrass.

Mr. ENRIGHT. He was not removed from the program. He was supposed to have been removed from the program when he didn't follow his instructions, so he just delayed his removal by a week.

Mr. LISHMAN. Did you rush into Mr. Snodgrass' booth after the commercial, after he had given the right answer when he was supposed to give the wrong answer?

Mr. ENRIGHT. I do not recall. I have read the testimony of Mr. Snodgrass to that effect, and I don't recall that at all. I do not recall coming down to the isolation booth.

Mr. LISHMAN. Do you recall having a conversation with Mr. Snodgrass following that program?

Mr. ENRIGHT. To what effect?

Mr. LISHMAN. I am asking you whether you had the conversation. Then we will come to the effect.

Mr. ENRIGHT. He testified that he and I conversed in the press room of NBC, and I remember that conversation, yes. I told him that apparently we had made an error, and that this might require us to play another game.

Mr. LISHMAN. Did you also say to him in effect that perhaps it was not so bad after all, since in effect you would be able to recoup some of the unanticipated loss that was involved in the \$73,000 which was won as a result of his failure to give the wrong answer?

Mr. ENRIGHT. No. I do not recall discussing budget with Mr. Snodgrass.

Mr. LISHMAN. In your talks with Mr. Rosenhouse and Mr. Kletter of the sponsor, did you discuss what controls would be used in order to keep within the budget allocation of prize money?

Mr. ENRIGHT. No, sir, I never discussed that with either Mr. Kletter or with Mr. Rosenhouse.

Mr. LISHMAN. Did Mr. Rosenhouse or Mr. Kletter ever have any knowledge that you were exercising controls in this program?

Mr. ENRIGHT. Not to my knowledge, sir.

Mr. LISHMAN. Mr. Enright, in the summer of 1957, was your attention called to the fact that Mr. Stempel was threatening to expose the situation through a newspaper in New York?

Mr. ENRIGHT. That's right.

Mr. LISHMAN. And what did you do when you first received that news?

Mr. ENRIGHT. Well, it was not in the summer, as I recall. It was in late winter of 1957. It was after he attempted to blackmail me that he went to the New York Post and gave them the story. When I found out about it, I consulted with our public relations people and my lawyer.

Mr. LISHMAN. From whom did you learn about this story?

Mr. ENRIGHT. I forget. As I recall, a New York Post reporter called our office trying to locate Mr. Stempel.

Mr. LISHMAN. Did Mr. Franklin tell you about a call he had received from a friend on a newspaper?

Mr. ENRIGHT. I do not recall. As I recall, the phone call from the New York Post tried to locate Mr. Stempel. It came to us a week after he came in to blackmail me, and from that I deduced that he had gone to the New York Post. As I recall, I advised Mr. Franklin of that. Now, whether he received the phone call or not, I do not recall.

Mr. LISHMAN. After this information, did you have a meeting with representatives of NBC?

Mr. ENRIGHT. No, sir. Not after this bit of information.

Mr. LISHMAN. Did you ever have a conference which was attended by Mr. Eiges and Mr. Moore of NBC and Mr. Franklin?

Mr. ENRIGHT. Yes, I did. That took place, sir, after Stempel went to the Journal-American.

Mr. LISHMAN. And about when was that conference?

Mr. ENRIGHT. That was, as I recall, sometime in mid-September of 1957.

Mr. LISHMAN. And at that meeting, did you discuss what should be done in order to minimize the impact of the exposure in a newspaper article?

Mr. ENRIGHT. Yes.

Mr. LISHMAN. Did you tell Mr. Eiges that Mr. Stempel's story was untrue and false?

Mr. ENRIGHT. Not to my recollection.

Mr. LISHMAN. Did you tell anybody at that meeting that Mr. Stempel's story was true or untrue, false?

Mr. ENRIGHT. Not to my recollection. But in all fairness, sir, from my conduct one would infer that his story was untrue and false. I am sure I acted very indignant.

Mr. LISHMAN. Did Mr. Eiges ask you if Mr. Stempel's story was true?

Mr. ENRIGHT. No.

Mr. LISHMAN. Did Mr. Moore ask you if Mr. Stempel's story was true?

Mr. ENRIGHT. Not to my recollection.

Mr. LISHMAN. Did anybody at that meeting ask you that question?

Mr. ENRIGHT. No. No.

Mr. LISHMAN. Did you hear anyone at that meeting ask that question of anyone else? Is Mr. Stempel's story true?

Mr. ENRIGHT. No. And I think that question would have been properly referred to me, inasmuch as I had been accused of having given questions and answers.

Mr. LISHMAN. What did you discuss at this meeting, if you were not interested in having made known to the representatives of NBC that Mr. Stempel's story was true, or untrue? What did you discuss?

Mr. ENRIGHT. How to avoid having the story.

Mr. LISHMAN. How to avoid having any story, irrespective of whether it was true or false?

Mr. ENRIGHT. That is right.

Mr. LISHMAN. And what measures did you decide to adopt in order to prevent the publishing of any story, irrespective of whether it was true or false?

Mr. ENRIGHT. Well, I am laboring, unfortunately, under the impressions I gained from reading Mr. David's and Mr. Franklin's testimony today, so I am not sure whether that is my true reflection or whether I am not being impressed by them. I would think what Mr. Davis testified to regarding the decision to just stay put would be what was decided at the time. I also recall that Mr. Eiges was going to make some phone calls to determine what the Journal-American intended to do about the matter. And the meeting ran for about 2 hours and got nowhere, actually.

Mr. LISHMAN. Was this conference subsequent to the time you had sold the properties to the NBC for more than \$2 million?

Mr. ENRIGHT. That is right.

Mr. LISHMAN. After this meeting, did you have any other conferences with representatives of NBC?

Mr. ENRIGHT. Regarding, I imagine, this Stempel issue?

Mr. LISHMAN. Regarding Stempel. Or anything about the quiz show being fixed.

Mr. ENRIGHT. Well, of course, other than the conferences that ensued with the district attorney's entry into this matter, I think there was one in Tom Ervin's office. And there, again, I think I am being influenced by Mr. Ervin's testimony, but I can't recall otherwise.

Mr. LISHMAN. Was that the night of the day the Stempel story broke in the newspapers?

Mr. ENRIGHT. No, no. I think that might have taken place after the Journal-American issue. For personal clarity, may I suggest that there be three periods separate from each other. There was a period of the New York Post. Then there was a period of the Journal-American.

Mr. LISHMAN. Can you give the approximate dates?

Mr. ENRIGHT. Of the New York Post?

Mr. LISHMAN. The first one.

Mr. ENRIGHT. Yes. The New York Post took place sometime in March of 1957. The Journal American took place in September of 1957. And the one which involved the district attorney of New York took place at the end of August 1958.

Mr. LISHMAN. Well, in connection with the second meeting you had with representatives of the NBC, who was present?

Mr. ENRIGHT. You are referring now to the meeting with Tom Ervin?

Mr. LISHMAN. Referring to the meeting with whom?

Mr. ENRIGHT. There was a meeting with Sid Eigus and Moore.

Mr. LISHMAN. That is the first meeting, as I understand it.

Mr. ENRIGHT. Which was in the New York Journal-American.

Mr. LISHMAN. And that was around September?

Mr. ENRIGHT. Of 1957.

Mr. LISHMAN. There was a subsequent meeting to that between you and representatives of NBC?

Mr. ENRIGHT. As I recall, yes, still regarding the Journal-American issue.

Mr. LISHMAN. And about when did that second meeting take place?

Mr. ENRIGHT. I don't know. I imagine within days of the meeting with Mr. Eigus.

Mr. LISHMAN. And who attended this second meeting?

Mr. ENRIGHT. To the best of my recollection, it was my attorney and Mr. Ervin.

Mr. LISHMAN. Just you, your attorney——

Mr. ENRIGHT. To the best of my recollection

Mr. LISHMAN. And what happened at that meeting?

Mr. ENRIGHT. Just—and I recall it very, very vaguely—just a general discussion as to how to cope with the matter. And I forget the details.

Mr. LISHMAN. Did Mr. Ervin ask you if Stempel's story was true or false?

Mr. ENRIGHT. I do not recall Mr. Ervin ever asking me that question, but in all fairness to Mr. Ervin, I should state that from my conduct he could properly infer that the statement was false.

Mr. LISHMAN. Did you ever tell Mr. Ervin that it was false?

Mr. ENRIGHT. I might have told him that after the district attorney entered the case.

Mr. LISHMAN. No; at this meeting. Let us go along with one meeting at a time.

Mr. ENRIGHT. To the best of my recollection. I am not here to represent Mr. Ervin, but in all fairness to him, he could deduce from my conduct that it was false.

Mr. LISHMAN. What was your conduct from which he could make such a deduction?

Mr. ENRIGHT. Well, that we were dealing with a sick man, with a blackmailer, with an irrational person.

Mr. LISHMAN. And at the time that you were conducting yourself so as to give that impression, you knew full well that you had been giving questions and answers in advance to Mr. Stempel; is that correct?

Mr. ENRIGHT. That's right, yes.

Mr. LISHMAN. But you never told that to Mr. Ervin or anyone connected with NBC?

Mr. ENRIGHT. No, I did not.

Mr. LISHMAN. You never did?

Mr. ENRIGHT. I did not.

Mr. LISHMAN. Were you ever asked by anyone at NBC whether you had given questions and answers in advance to Mr. Stempel?

Mr. ENRIGHT. Not to my recollection. But there, again, it might be fair for them to deduce from my conduct that I had not given them questions and answers.

Mr. LISHMAN. Why did you suggest that there should be a psychiatric twist to be given to the Stempel situation?

Mr. ENRIGHT. I suggested a psychiatric—I do not recall ever making that suggestion.

Mr. LISHMAN. Well, who did?

Mr. ENRIGHT. I don't recall anyone ever making that suggestion. Are you referring now to—what, specifically?

Mr. LISHMAN. Well, Mr. Ervin's testimony was that you had referred Mr. Stempel to a different psychiatrist.

Mr. ENRIGHT. Oh, I am sorry. I misunderstood your question. Can you rephrase it, sir?

Mr. LISHMAN. Well, I asked: Why did you suggest to the NBC people this psychiatric twist in which to dispel the impact of the correctness of Stempel's story?

Mr. ENRIGHT. Well, "psychiatric twist" has a connotation of being an untruth.

Mr. LISHMAN. I will rephrase the question.

Mr. ENRIGHT. Will you, please?

Mr. LISHMAN. Why did you suggest to the representatives of NBC that they should not pay any attention to Stempel because he was in need of psychiatric treatment?

Mr. ENRIGHT. I don't know whether I suggested it. I might have implied it. But I don't know whether I verbally suggested it.

Mr. LISHMAN. Did you state that Stempel was a madman?

Mr. ENRIGHT. I stated that Stempel needed psychiatric care, yes.

Mr. LISHMAN. And you say that this meeting took place only a few days after the first meeting?

Mr. ENRIGHT. I am going by Mr. Ervin's testimony. I do not recall when it took place, but I understand he testified to that effect.

Mr. LISHMAN. What do you recall?

Mr. ENRIGHT. I have no recollection, sir.

Mr. LISHMAN. Now, when was the next meeting you had with representatives of NBC?

Mr. ENRIGHT. Well, the most important meeting that comes to mind, of course, is the one that took place on the evening when the World-Telegram broke the story on Stempel.

Mr. LISHMAN. Who attended that meeting?

Mr. ENRIGHT. To the best of my recollection, there were Mr. Bilby, Mr. Ervin, Mr. Franklin, Mr. Davis, Mr. Cohn, and me.

Mr. LISHMAN. Did anyone at that meeting ask you whether Mr. Stempel's story was true or false?

Mr. ENRIGHT. No.

Mr. LISHMAN. Did anyone at that meeting ask you whether you had ever given questions and answers in advance to Mr. Stempel?

Mr. ENRIGHT. Not to my recollection.

Mr. LISHMAN. Did you deny that you had ever given questions and answers in advance to Mr. Stempel?

Mr. ENRIGHT. I might have. I do not recall. I might have. And the least I did was to conduct myself in a very indignant and very excitable fashion, simply because I was excitable. I was excited at

the time, rather. Both Mr. Bilby and Mr. Ervin would have full reason to infer from my conduct that the story was wrong. And I might have also denied it. I don't recall, but I might have.

Mr. LISHMAN. Did you have any reason to believe that the NBC representatives knew that controls were being exercised on this show?

Mr. ENRIGHT. I will try to answer it to the best of my ability. I cannot go on knowledge. I can only go on assumption. And assumptions are quite frequently unfair.

I think, being in an industry for 20 or 25 years, you would have to be very unsophisticated or very naive not to understand that certain controls have to be exercised. Now, the extent of the controls is something else. As to what NBC knew, I cannot testify to firsthand. I would assume that certainly the sophisticated employees in their program department would realize that some controls have to be exercised.

Mr. LISHMAN. Well, did the demeanor of the NBC representatives lead you to believe that they knew that controls were being exercised on this show?

Mr. ENRIGHT. No.

Mr. LISHMAN. Do you have any information that NBC officials knew that controls were being exercised on this or on any other show?

Mr. ENRIGHT. No, I had no such information.

Mr. LISHMAN. Do you have any similar information concerning CBS officials?

Mr. ENRIGHT. You are referring now to firsthand information, firsthand knowledge?

Mr. LISHMAN. Yes.

Mr. ENRIGHT. No, I do not.

Mr. LISHMAN. Mr. Enright, did you instruct Mr. Freedman to contact the contestants before they appeared before the district attorney.

Mr. ENRIGHT. Not to my recollection, no.

Mr. LISHMAN. Well, did you understand that Mr. Freedman was contacting them?

Mr. ENRIGHT. Yes, I did.

Mr. LISHMAN. And did he report back to you the result of his contacts?

Mr. ENRIGHT. To the best of my recollection, he did.

Mr. LISHMAN. What was the purpose of these contacts?

Mr. ENRIGHT. Well, I think it comprised a double purpose. I think there were certain instances in which Mr. Freedman felt that the contestants were very anxious to know his attitude on this issue. And certainly Mr. Freedman wanted to know what their attitude was. I wanted to know, too.

Mr. LISHMAN. Did you contact any contestant yourself, personally, before they appeared before the district attorney.

Mr. ENRIGHT. Did I directly make the first contact? Not to my recollection. I do not recall.

Mr. LISHMAN. Did you speak to Mr. Jackman?

Mr. ENRIGHT. Oh, yes. I am sorry.

Mr. LISHMAN. And what was the substance of your conversation with Mr. Jackman at that time?

Mr. ENRIGHT. It was to the effect of what he would tell the district attorney when he was called down to the DA's office.

Mr. LISHMAN. And what did you tell him?

Mr. ENRIGHT. I didn't tell him. I asked him what he was going to say to the district attorney. To the best of my recollection, he replied that he was going to tell the truth.

Mr. LISHMAN. Is it a fair inference that it was intended that when Mr. Freedman informed these contestants that he was going to give false answers in the district attorney's office as to the contestants, it would induce them to do otherwise?

Mr. ENRIGHT. I don't know whether it would necessarily induce them. You have to remember that just as we were terribly anxious not to have to reveal the contestants, there were contestants who were very anxious not to reveal what they had done on the programs. And quite possibly they wanted assurances from Mr. Freedman that he would not testify as to their identity.

Mr. LISHMAN. Mr. Franklin and Mr. Davis were employed by you?

Mr. ENRIGHT. That is right.

Mr. LISHMAN. And did you have a meeting with Mr. Davis in company with a lawyer named Slote prior to his appearance before the district attorney?

Mr. ENRIGHT. Mr. Davis, Mr. Franklin, and Mr. Slote. The four of us were together, yes.

Mr. LISHMAN. Do you recall those meetings?

Mr. ENRIGHT. Yes, I do. Yes.

Mr. LISHMAN. Can you state what advice was given to Mr. Davis by Mr. Slote at that meeting?

Mr. ENRIGHT. As I recall, that particular meeting concerned itself with Mr. Franklin's being subpoenaed. I never recall Mr. Davis being subpoenaed by the grand jury.

Mr. LISHMAN. I am not talking about any subpoena. I am talking about before their appearance before the district attorney.

Mr. ENRIGHT. What I was leading up to was the fact that the meeting occupied itself with Mr. Franklin. I do not recall it occupying itself with Mr. Davis. Mr. Slote asked Mr. Franklin what his recollection was insofar as Mr. Stempel was concerned.

Yes; you are right. He also asked Mr. Davis as to what his recollection was insofar as Mr. Stempel was concerned. They told him, and he then said that he thought he should pursue the matter in private meetings with them.

Mr. LISHMAN. At any meeting at which you were present, did Mr. Slote advise Mr. Davis or Mr. Franklin or both that they should either perjure themselves or leave the country?

Mr. ENRIGHT. Not to my recollection, sir. In fact, I am pretty certain, I am certain, that did not happen when I was there.

Mr. LISHMAN. In addition to furnishing the questions and answers in advance to Mr. Stempel, did you furnish the questions and answers in advance to any other contestants on "Twenty-one"?

Mr. ENRIGHT. To Mr. Jackman.

Mr. LISHMAN. Did you furnish them to anyone else?

Mr. ENRIGHT. To one man who played against Stempel and lost.

Mr. LISHMAN. Well, is it fair to say that you were the guiding hand of the program and its control?

Mr. ENRIGHT. Yes, sir.

Mr. LISIMAN. I have no further questions.

Mr. MACK. Did you have something further that you wanted to say?

Mr. ENRIGHT. Yes, just for the matter of the record, Mr. Jackman, I understand, stated today or rather implied, that he had not sued us or that he had not collected the \$9,500. As a matter of fact, he filed the suit 9 or 10 months ago, and we had told him that we would not be able to pay him the \$9,500 until the grand jury was dismissed. Upon dismissal of the grand jury he was paid the \$9,500.

May I—I am sorry.

Mr. MACK. You said the sponsor retained this money. So Mr. Jackman must have been paid by the sponsor. Is that right?

Mr. ENRIGHT. That is right.

Mr. MACK. The sponsor made the check out to Mr. Jackman?

Mr. ENRIGHT. No. The process was that the sponsor would send us the money, and we would then deposit it in the account and pay out of that account all prize moneys due contestants. We would then to my recollection account each week for the amounts of money paid out that week to the sponsor.

Mr. MACK. You accounted each week rather than at the end of the 13-week period?

Mr. ENRIGHT. That is right. At the beginning, the first few weeks of the show, we might have knocked out each week, because it took us a certain amount of money to get our bookkeeping set up. But once our program got set up, we would get out a memo each week.

In fact, copies were given to the district attorney's office in New York, accountings for each payment.

Mr. MACK. So that you had an accounting at the end of each week?

Mr. ENRIGHT. Not an accounting, but a report. A report was made to the sponsor as to the amounts of money paid out that week. Then in return, periodically we would get an accounting from the sponsor, and we would tally it.

Mr. MACK. Was this before or after NBC purchased?

Mr. ENRIGHT. This was before NBC purchased. Afterward all such negotiations took place between NBC and the sponsor.

Mr. MACK. And you share Mr. Freedman's view that it made no difference after that time how much money was spent because of NBC's taking care of it?

Mr. ENRIGHT. No, sir. I can't. Simply because the job of Mr. Freedman was to produce a program. My job was not only to supervise production of the program, but to be accountable for all moneys expended, so that I could not be divorced from that particular issue.

Mr. MACK. You did exert effort to remain within your budget even after NBC purchased the program?

Mr. ENRIGHT. Yes, sir.

Mr. MACK. Now, why did you consult with the sponsor when you gave certain advances to the contestants?

Mr. ENRIGHT. Simply because I felt that it was his money I was paying out, and that conceivably, if we had paid someone beyond the money that was due him, and we had run, let's say, under budget, I felt, "This is money that the sponsor will be paying for," and I would have to obtain his approval before he spent his money. Conceivably he might have been paying that money.

Mr. MACK. Would that be in the event that you exceeded your budget?

Mr. ENRIGHT. No. In the event that we exceeded the budget, the arrangement was that we would have to accept the surplus ourselves and pay for the excess ourselves. But in the event that we were on budget, then the question would arise, "Who is going to pay for the advance given, let's say, to a contestant who never received that money in his final winnings?" If he was advanced, say, \$5,000 and they only wind up with \$3,000, who would take care of the balance of \$2,000? And I felt I needed the sponsor's approval of that if I were to include that in my reports to him each week.

Mr. MACK. So as not to prolong the questioning, why did you make such advances? Was that because of request of the contestant?

Mr. ENRIGHT. In the instance of Mr. Stempel, it was at his request.

Mr. MACK. It was at his request?

Mr. ENRIGHT. Yes, sir.

Mr. MACK. And that was after you entered into the agreement, or after the time that you had coached him on the program?

Mr. ENRIGHT. That's right.

Mr. MACK. Could it have been that he was concerned about the possibility that he might lose the money at some point along the way?

Mr. ENRIGHT. I don't know what his concern was. He just came to me twice and each time said, "Unless you give me"—and he cited a figure—"unless you give me that figure, I am leaving the program."

Mr. MACK. Then why did you advance the money to Mr. Van Doren?

Is that a fair question?

Why did you advance the money to Mr. Van Doren?

Mr. ENRIGHT. It was done at the recommendation of Mr. Freedman, who told me that Mr. Van Doren would have to quit the show with the money he was then earning. And Mr. Freedman suggested that we advance him the \$5,000 in order to induce him to stay on the program.

Mr. MACK. And did Mr. Freedman indicate why Mr. Van Doren was going to quit the program if the money was not available?

Mr. ENRIGHT. Apparently he needed a certain amount of money. And he had more than that, and apparently he felt that he should quit the program.

Mr. MACK. As I understand it, he had won, at that time, approximately \$28,000.

Mr. ENRIGHT. As I recall, it was about \$26,000.

Mr. MACK. But also, if I understand the game correctly, he could lose it all in one night.

Mr. ENRIGHT. Yes, and also lose the \$5,000. If he lost, he would have wound up with a consolation of \$1,500.

Mr. MACK. Did Mr. Freedman indicate that Mr. Van Doren had requested the money at that time?

Mr. ENRIGHT. No. What Mr. Freedman indicated to me, as I recall, was that Mr. Van Doren wanted to quit the show in order to retain that amount of money. And it was Mr. Freedman's recommendation that we give him \$5,000. I definitely agreed with Mr. Freedman.

Mr. MACK. Yes. Then the \$5,000 was an inducement to him to continue at that particular time?

Mr. ENRIGHT. Yes, the premise being that he would have the minimum of \$5,000, regardless of what happened to him on the program.

Mr. MACK. Could you tell the committee why Mrs. Nearing was paid \$10,000, when she had won only \$4,500?

Mr. ENRIGHT. As I recall, with Mrs. Nearing, after she won from Van Doren, she wanted to quit the program for the same reason. She had reached, I think, about \$14,000, and she wanted to quit the program with the \$14,000. And Mr. Freedman asked me whether I would approve it if he were to arrange a \$10,000 minimum guarantee to her, and I did.

Mr. MURPHY. May we go off the record on that, Mr. Chairman?

The CHAIRMAN. Do you want to go off the record and make a statement?

(Discussion off the record.)

Mr. MACK. I want to ask if you gave assistance to Miss Leibbrand.

Mr. ENRIGHT. No, sir, not to my recollection.

Mr. MACK. Did you have anything to do with Miss Leibbrand when she was on the program?

Mr. ENRIGHT. As I recall—it is a very vague recollection—it was more based on custom.

Mr. MACK. On what?

Mr. ENRIGHT. On custom. On procedural operation. I met her before she was scheduled on the program, as I was wont to do with every contestant who appeared on the program. I do not recall meeting her, specifically. Vaguely I recall, but not too specifically. However, I would say that with perhaps one or two instances I met every contestant who appeared on the program.

Mr. MACK. You met every contestant?

Mr. ENRIGHT. Every contestant who appeared on the program, I met previously to the contestant appearing on the program.

Mr. MACK. Mr. Freedman testified that before he assumed his responsibility as producer he was at that time being briefed on procedure.

Mr. ENRIGHT. That is my recollection, too.

Mr. MACK. Now, who would have been the appropriate person to render assistance or give instructions to Miss Leibbrand at the time?

Mr. ENRIGHT. I don't recall her being given any assistance.

Mr. MACK. This was during this transition period. And I assume that someone coached her in some fashion or another as to whether she should count to five before she answered the question or whether she should bite her lower lip, or whatever the appropriate instructions would be. My question is: Which representative would have been the one who would have given her those instructions?

Mr. ENRIGHT. In lieu of Mr. Freedman, it would have been Mr. Merrill. But I must qualify it by saying that I do not recall that Miss Leibbrand was given any assistance.

Mr. MACK. Would you recall it if anyone had instructed her not to request that category over No. 7 or 8?

Mr. ENRIGHT. In her specific case I do not recall. It is possible, but I honestly do not recall.

Mr. MACK. You do not recall whether you gave her such instructions?

Mr. ENRIGHT. I did not.

Mr. MACK. Thank you, Mr. Chairman.

(Discussion off the record.)

Mr. SPRINGER. I understood you to say, in response to Mr. Lishman's question, that you did not have any firsthand information that contestants on the CBS programs were being supplied information. Is that the statement you made?

Mr. ENRIGHT. That's right.

Mr. SPRINGER. May I ask if you had any indirect or secondhand information that questions and answers were being supplied to contestants on the CBS program?

Mr. ENRIGHT. I will be glad to answer the question, Mr. Springer. But the only problem is that I would like to preface it by saying that it is unfair of me to indict people based on rumor or hearsay. Any information I gathered was hearsay information.

Mr. SPRINGER. May I ask, first of all, without naming it: Who supplied you the information?

Mr. ENRIGHT. It is just that there has been talk. I forget the individual.

Mr. SPRINGER. In other words, no direct information from anybody you knew?

Mr. ENRIGHT. That's right.

Mr. SPRINGER. This was in the nature of rumor, then?

Mr. ENRIGHT. That's right.

Mr. SPRINGER. To come to NBC for just a moment, it is my understanding, in response to a question by Mr. Lishman, that you said that Mr. Ervin had reason to believe, from your conduct and what was said by you, that the program was fixed, and that Mr. Stempel was probably telling the truth.

Mr. ENRIGHT. He had reason to infer that? No, sir. He did not have reason to infer that.

Mr. SPRINGER. I just wonder if you have contradicted the answer you previously gave.

Mr. ENRIGHT. What I stated or intended to state was that from my conduct Mr. Ervin had reason to infer that I had not given questions and answers to Mr. Stempel.

Mr. SPRINGER. I am glad that is corrected.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS. Mr. Enright, could you explain to me briefly how you could arrange to dispose of one contestant without the other knowing about it?

Mr. ENRIGHT. Yes, you could do it. You were taking chances when you were doing it, simply because you would not know whether the opponent would not wind up with a higher score.

For instance, if you arranged to feed questions to one contestant, and decided that he would play three rounds of the game, you would not know whether his opponent would attain 21 in two rounds and thus beat the first contestant. And therefore you would be taking chances. But those were the normal risks that you were taking.

Mr. ROGERS. I did not get your answer about 20 and 21.

Mr. ENRIGHT. The purpose of the game was to achieve 21. The first contestant to achieve 21 would be the winner. At times, a contestant who was fed questions and answers would be asked to attain

21 in three rounds. Say, go for an eight point question, another eight point question, and then a five point question.

Mr. ROGERS. That was the person you wanted to keep on the show?

Mr. ENRIGHT. That is right.

Mr. ROGERS. What would you tell the person you wanted to dispose of?

Mr. ENRIGHT. There were many instances where you would tell him nothing. You would just run the risk of having him reach 21 in two rounds, namely going for 10 and 11. That is the risk you would run.

Mr. ROGERS. As a matter of fact, you would tell him to go for seven or eight, like this Miss Leibbrand testified, and there was no way in the world she could win. That is something like swinging a ball on the chain at the ten pin, was it not?

Mr. ENRIGHT. I can't testify as to Miss Leibbrand, because I have no knowledge of it. But there were other instances of people who played against people who were fed questions and answers, and these people were not given any questions or answers, nor were they instructed what points to go for.

Mr. ROGERS. About what percentage of the time that you decided to dispose of one would you say that both contestants knew of it?

Mr. ENRIGHT. May I clarify your question? In those instances when we had the two contestants playing against each other and both were being fed questions and answers? Are you referring to those instances?

Mr. ROGERS. Yes.

Mr. ENRIGHT. And you would like to know what, Mr. Rogers?

Mr. ROGERS. The percentage of time that you intended to dispose of one of the contestants at a certain time, and both contestants knew what was going on.

Mr. ENRIGHT. Well, it is hard for me to state it. If there were 20 contestants on "Twenty-one" who had been fed questions and answers, and some of them might have played against each other—

Mr. ROGERS. Well, but I do not think the testimony was that there were 20. I think there were 20 that Mr. Freedman advised. How many did you advise?

Mr. ENRIGHT. To the best of my recollection, three.

Mr. ROGERS. Three?

Mr. ENRIGHT. Three.

Mr. ROGERS. Do you mean three shows?

Mr. ENRIGHT. No, three contestants, three individuals.

Mr. ROGERS. And that is all that you ever advised?

Mr. ENRIGHT. To my best of my recollection, one was Jackman, one was Stempel, and one was one of the men who lost to Stempel while Stempel was on the program.

Mr. ROGERS. Now, in regard to the contestants, you say you talked to three individuals, it is your recollection. Now, how many performances would you say would have been covered by the ones you talked to?

Mr. ENRIGHT. By these three? Well, Stempel was on for six shows.

Mr. ROGERS. I thought—well, you are getting into the names of the ones who have testified. Would you say more than 50 percent of the performances would come within the category?

Mr. ENRIGHT. You mean overall?

Mr. ROGERS. Where both parties knew.

Mr. ENRIGHT. And including the entire period of the show from its inception until when it went off the air. I have no idea, but in order not to prolong this issue, I would go along with Mr. Freedman and agree with him.

Mr. MURPHY. That is a different question.

Mr. ROGERS, is your question whether both parties knew?

Mr. ROGERS. Yes.

Mr. ENRIGHT. May I withdraw my answer?

Mr. ROGERS. I want it correct.

Mr. ENRIGHT. This is a very wild guess, because I don't have the opportunity to sit down and figure it out. I would say in those instances it probably would be maybe 10 to 15 percent.

Mr. ROGERS. Mr. Enright, did the contestants on these shows that received money always receive the exact amount as shown to the people, and advertised to have been received by them?

Mr. ENRIGHT. No. There were two exceptions to that. One was Mr. Jackman, who at the time only received \$15,000 of the \$24,500 which he was supposed to have been awarded. He later got the other \$9,500.

Mr. ROGERS. Go ahead.

Mr. ENRIGHT. And Mrs. Nearing, who received \$10,000 instead of, as I recall, the \$5,500 she was supposed to have been awarded.

Mr. ROGERS. Now, who paid Mr. Jackman? Did you pay him, or did the Pharmaceuticals, Inc., pay him?

Mr. ENRIGHT. We paid Mr. Jackman, but the amount of his payment was reported to the advertising agency, and in their records he was listed as having been paid \$15,000.

Mr. ROGERS. I am talking about the \$9,500 that was paid later on.

Mr. ENRIGHT. No, we paid it. Mr. Barry and I paid it.

Mr. ROGERS. You and Mr. Barry?

Mr. ENRIGHT. That's right.

Mr. ROGERS. Not NBC?

Mr. ENRIGHT. No, sir.

Mr. ROGERS. Who paid the loss on the entire program?

Mr. ENRIGHT. NBC.

Mr. ROGERS. What was that? \$75,000?

Mr. ENRIGHT. This is a figure I heard of this afternoon. I am not certain. I think it was in the 70's.

Mr. ROGERS. That was after NBC bought the program from you, was it not?

Mr. ENRIGHT. That's right. It was in the 70's.

Mr. ROGERS. Now, did the high winner, the big winner on this thing, receive the fabulous amount of money that it was advertised that she was receiving?

Mr. ENRIGHT. Every cent of it.

Mr. ROGERS. Every cent of it. She received it by check?

Mr. ENRIGHT. By check.

Mr. ROGERS. From Barry & Enright?

Mr. ENRIGHT. I do not recall whether it was a Barry & Enright or whether it was a check made out by Pharmaceuticals, Inc., in order for them to be able to use it in their promotional advertising.

Mr. ROGERS. Now, one more question. About this fellow Franklin, did you tell him at any time, or were you present at the meeting where he was told, that if everybody told a fib, and he told the truth, you would prosecute him for perjury?

Mr. ENRIGHT. No, sir.

Mr. ROGERS. How many meetings did you have with Mr. Franklin?

Mr. ENRIGHT. Well, when the scandal first broke, our meetings were very frequent, daily and hourly, practically. So it would be hard for me to put any number to it.

Mr. ROGERS. How many did you have after this broke, where any NBC representatives were there?

Mr. ENRIGHT. Well, there was one meeting with the NBC's representative on the evening that the scandal broke. There was one meeting.

Mr. ROGERS. And that is the only meeting where they had NBC representatives present?

Mr. ENRIGHT. Commencing with August 28, to the best of my recollection. August 28, 1958.

Mr. ROGERS. Only one meeting?

Mr. ENRIGHT. To the best of my recollection.

Mr. ROGERS. And where was that?

Mr. ENRIGHT. That took place in the executive offices of NBC.

Mr. ROGERS. In whose office? Do you remember the name?

Mr. ENRIGHT. I think it was Mr. Bilby's office.

Mr. ROGERS. Mr. Bilby?

Mr. ENRIGHT. Bilby, B-i-l-b-y.

Mr. ROGERS. That is all, Mr. Chairman.

Mr. DEROUNIAN. Do you recall a meeting with Mr. Ervin of NBC after this newspaper story was about to leak out on Stempel?

Mr. ENRIGHT. Yes, I recall, but not too clearly. I am reenforcing my recollection by Mr. Ervin's testimony.

Mr. DEROUNIAN. Well, are you acquainted with his testimony today?

Mr. ENRIGHT. Very vaguely, just that we had a meeting in his office.

Mr. DEROUNIAN. Did he ask you at that time whether or not the charges by Stempel were true?

Mr. ENRIGHT. Not to my recollection. But I reiterate, Mr. Derounian, that he could infer from my conduct that the charges were untrue.

Mr. DEROUNIAN. Did you tell him that you had a confession from Stempel?

Mr. ENRIGHT. I told him I did. A repudiation.

Mr. DEROUNIAN. Did you tell him you had recordings of a confession by Stempel?

Mr. ENRIGHT. No, I told him, as I recall, that I had recordings of admission to blackmail by Stempel.

Mr. DEROUNIAN. Did you have those recordings, actually?

Mr. ENRIGHT. Yes, sir.

Mr. DEROUNIAN. You never offered to show them to him or play them to him?

Mr. ENRIGHT. Well, I think it is implicit in the statement that he was welcome to use them.

Mr. DEROUNIAN. And you thought at that time that Stempel was really off his rocker, figuratively speaking?

Mr. ENRIGHT. I think Mr. Stempel was disturbed, yes.

Mr. DEROUNIAN. Now, for how much did you sell your show to NBC?

Mr. ENRIGHT. Well, it is not just one show. We sold a large package of shows for \$2,200,000, approximately.

Mr. DEROUNIAN. Were the principals of the corporation you and Mr. Barry? Do you own all the stock?

Mr. ENRIGHT. We did not sell the corporation. We sold the assets.

Mr. DEROUNIAN. But you got \$2,250,000?

Mr. ENRIGHT. After taxes, commissions, and so forth.

Mr. DEROUNIAN. No further questions.

Mr. FLYNT. Mr. Enright, you said some contestants were brought in to participate in one or more ties. Is that correct?

Mr. ENRIGHT. Yes, sir.

Mr. FLYNT. If you brought them in to participate in ties, how could they tie, if both contestants did not know about it?

Mr. ENRIGHT. Occasionally they did, and occasionally they didn't.

Mr. FLYNT. Well, did both of them know about it?

Mr. ENRIGHT. Not always, no.

Mr. FLYNT. Well, in most instances did most of them know about it?

Mr. ENRIGHT. In a number of instances, yes.

Mr. FLYNT. Because if you brought a man in for the purpose of participating in a tie, that was to build up audience appeal, interest?

Mr. ENRIGHT. To build up entertainment and excitement.

Mr. FLYNT. That would be particularly true if they took low value questions that had three or four points, like they did on that fashion category; wouldn't it?

Mr. ENRIGHT. I am sorry. I didn't hear your question.

Mr. FLYNT. It would be almost necessary for both contestants to be in on it if they took low-point questions.

Mr. ENRIGHT. Well, the fact, Mr. Flynt, is that that happened without both contestants being in on it.

Mr. FLYNT. It did happen. And they took low-point questions?

Mr. ENRIGHT. No. One time one contestant who was being fed questions and answers took a 10 and an 11 and hit 21. And his opponent, who was not fed questions, did the same.

Mr. FLYNT. But there was one case where you asked questions on the category of ladies' fashions, and both of them made a statement almost identical, to the effect that they didn't know much about clothes, so they would take a low-point question. One of them took three, and one of them four. Is that right, Mr. Lishman? Or is that substantially right?

Mr. LISHMAN. Yes.

Mr. FLYNT. One took two and one four, and one four and one five. And it took two or three rounds to get up to anywhere near a high total. Would not both of them have to be in on something like that?

Mr. ENRIGHT. Mr. Flynt, did this actually happen?

Mr. LISHMAN. Yes, it did actually happen. Or not precisely, but the first question was three points, and the answer was nylon stockings. And I think if you follow that one through, there were I think three more small numbers before you reached 21.

Mr. FLYNT. Or 17. They might have tied at 17.

(Discussion off the record.)

Mr. FLYNT. Well, let me ask you this question, then. Have you told the contestant or suggested to a contestant that he leave the country rather than come down and appear before this committee?

Mr. ENRIGHT. Never.

Mr. FLYNT. At any time?

Mr. ENRIGHT. Never.

Mr. FLYNT. Would it be a substantially correct statement to say that one or both contestants were fixed or assisted or coached or more than 50 percent of the programs during the entire run of "Twenty-one?"

Mr. ENRIGHT. Yes, sir.

Mr. FLYNT. That is correct?

Mr. ENRIGHT. I would go along with Mr. Freedman. Yes.

Mr. FLYNT. I think that is all, Mr. Chairman.

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. When one contestant has been advised that he is to pick a certain number and at the end of the meeting he will have tied on more than one occasion, do you know what the mathematical percentage averages are as to the other contestant also tying, without having previously been advised of the same thing?

Mr. ENRIGHT. No. I do not, sir. I imagine they are pretty low, but I don't know what they are.

Mr. DEVINE. Would it be correct to say that they are over 100,000 to 1?

Mr. ENRIGHT. I have no way of stating, merely because I am not conversant with odds.

Mr. DEVINE. Do you know of any situation—I am not intimating or suggesting any contestants—where one contestant received advance information as to questions and answers and also was advised what points to pick and that he would tie? Do you know of any such situation in which the other contestant was not also so advised?

Mr. ENRIGHT. Just to clarify your question, an instance where one contestant was given questions and answers and his opponent was not? Is that your question? I am having difficulty, sir, understanding your question.

(Discussion off the record.)

The CHAIRMAN. I had no idea that we would be here this late, and I regret that we have found it necessary to go on this late.

(Discussion off the record.)

Mr. ENRIGHT. For the record, there are many, many discrepancies in Mr. Stempel's testimony regarding me.

Mr. LISHMAN. But substantially true, however?

Mr. ENRIGHT. Well, the truth rests in the charge that gave him questions and answers.

Mr. LISHMAN. It is true in that respect?

Mr. ENRIGHT. That's right.

The CHAIRMAN. Thank you very much for your testimony here tonight. And, of course, you will remain available, too, for any possible further testimony during the next 2 days.

The committee will adjourn until 10 o'clock this morning.

(Whereupon, at 12:55 a.m., the hearing was recessed, to reconvene at 10 a.m., Thursday, October 8, 1959.)

INVESTIGATION OF TELEVISION QUIZ SHOWS

THURSDAY, OCTOBER 8, 1959

HOUSE OF REPRESENTATIVES,
SPECIAL COMMITTEE ON LEGISLATIVE OVERSIGHT,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The special subcommittee met at 10 a.m., in the caucus room, Old House Office Building, Hon. Oren Harris (chairman) presiding.

Present: Representatives Harris, Mack of Illinois, Rogers of Texas, Flynt, Moss, Springer, Derounian, and Devine.

Also present: Robert W. Lishman, counsel to the subcommittee; Beverly M. Coleman, subcommittee principal attorney; Charles P. Howze, subcommittee attorney; Richard N. Goodwin, subcommittee special consultant; Herman Clay Beasley, subcommittee clerk; and Jack Marshall Stark, minority counsel.

The CHAIRMAN. The committee will be in order.

Last evening the committee held an executive session, I might say a rather extensive one, the way some people look around here anyway and the way I feel, at which time Mr. Enright and Mr. Freedman were witnesses.

The committee decided, on the information that had been presented to it, that the rules of the House would be applicable to their appearance, and particularly so since they had themselves requested it in an effort to avoid some of the things which the rules of the House were adopted to prevent. Due to the lateness of the hour, the committee did not consider last night the question of whether or not to make all or any part of their testimony available to the public. That question will be decided at a later time as soon as the committee has an opportunity to consider what it will do in connection with their presentation.

I might say also that both of them are producers of more than one show, and several shows, and the committee will very likely hear them again before these hearings are concluded.

Today we take up the show referred to as "Dotto," a show produced by Frank Cooper Associates for the Columbia Broadcasting System.

The first witness we will call this morning is Mr. David Huschle.

Mr. Huschle, will you come around? Will you be sworn, please?

Do you solemnly swear the testimony you give this committee to be the truth, the whole truth, and nothing but the truth, so help you God?

TESTIMONY OF DAVID HUSCHLE

Mr. HUSCHLE. I do so swear.

The CHAIRMAN. Will you have a seat?

Will you give your full name for the record?

Mr. HUSCHLE. David Huschle.

The CHAIRMAN. And your address?

Mr. HUSCHLE. 38 Willits Road, Glen Cove, N.Y.

The CHAIRMAN. What is your business or profession?

Mr. HUSCHLE. I am a restaurant manager.

The CHAIRMAN. You are a restaurant manager?

Mr. HUSCHLE. Yes.

The CHAIRMAN. Are you familiar with a so-called quiz show commonly referred to as "Dotto"?

Mr. HUSCHLE. Yes, sir.

The CHAIRMAN. Were you a contestant on the show?

Mr. HUSCHLE. I was.

The CHAIRMAN. When?

Mr. HUSCHLE. I was first a contestant on "Dotto" during the daytime in the month of February 1958. Then again in the month of July of 1958. The exact dates I am not sure of. I was on for about 5 days during the daytime show and for 3 consecutive weeks on the nighttime show.

The CHAIRMAN. Mr. Lishman, you may proceed with the witness.

Mr. LISHMAN. Mr. Chairman, in order that we may understand the testimony of this witness, who has been identified as a contestant on the nighttime show "Dotto," I would like to ask him to state whether or not he was a contestant on "Dotto" on July 15, 1958.

Mr. HUSCHLE. I believe that is the correct date. It was the 1st, the 8th, and the 15th.

Mr. LISHMAN. In order that we may understand the mechanics of the game and the testimony to follow, I would like at this time to ask the presentation of a kinescopic reproduction of the July 15, 1957, evening performance of "Dotto."

Mr. SPRINGER. You said 1957.

Mr. LISHMAN. 1958.

(Showing of kinescopic production.)

Mr. LISHMAN. Mr. Huschle, you have just seen a kinescopic showing of part of the "Dotto" show staged on the evening of July 15, 1958. You were the contestant, or you were a participant in that program, and does that reproduction correctly depict what actually happened that evening?

Mr. HUSCHLE. Yes, sir; that is an exact reproduction of the show.

Mr. LISHMAN. I should like at the appropriate time when the transcript is completed to have the sound on that portion of the program included in the record.

The CHAIRMAN. Without objection, it will be included.

(Transcript of the sound track follows:)

MARCH. Good evening. I'm Hal March. I used to be an Emcee but now I'm a contestant. [Fanfare.]

CARSON. My name is Johnny Carson. I used to be an Emcee but tonight I am a contestant. [Fanfare.]

NARZ. My name's Jack Narz. I used to be a contestant, and now I'm an Emcee.

RALPH PAUL. Hal March and Johnny Carson, two of television's top Emcees, become contestants in a special exhibition on the game that turns dots into pictures, and pictures into dollars. [Fanfare.] "Dotto." And here's the star of "Dotto," the Emcee, Jack Narz. [Fanfare.]

NARZ. Thank you. Hi, everybody. Thank you very much, ladies and gentlemen, and welcome to "Dotto," brought to you tonight by New Fab with Duratex, recommended by leading makers of fabrics and clothing. Well, sir, Hal March

versus Johnny Carson. That should be a real swinging exhibition a little bit later when they play each other in a game of "Dotto." Right now, though, may I direct your attention to our home Dotto picture in which we will now connect 10 more dots. [Fanfare.]

PAUL. In the next half hour, 10 more dots will be connected and a phone call will be made to one of you at home. If you can identify this famous face you will win one of the most spectacular prizes ever offered—a prize that will include a Continental Mark III convertible. So, stand by. That phone call may go to you. [Fanfare.]

NARZ. Thank you, Ralph. Well, we really have a busy evening in store. The battle of the Emcees later on, and our phone call. But right now, let's meet our champion from last week, Mr. David Huschle. Dave, want to come out here? [Applause.] Dave has already accumulated \$11,600 and he's about to meet his next challenger. Ralph, would you introduce our next player, please.

PAUL. The challenger—a modeling student from Jacksonville, Fla., Connie Hines. [Applause.] Hi, Connie.

NARZ. [Garbled.] Dave, what do you think of your opponent here?

HUSCHLE. Why—

NARZ. Yes—you took the words right out of my mouth. Welcome to "Dotto" time. Nice to have you here.

MISS HINES. Thank you.

NARZ. How long have you been here from Jacksonville?

MISS HINES. About 3 weeks, now, Jack.

NARZ. And I understand your ambition is to be a model. Are you working here in New York?

HINES. No, not yet. I only model down in Jacksonville, for stores down there, and came up to New York with big hopes—but that's all I've got—a hope.

NARZ. Well, may I say that you look very well in your hopes, Connie, indeed. You're not married then, I take it?

HINES. No. I always thought I would be by now. When I was 16 I thought I would be married by the time I was 18. When I was 18 I thought I would be married when I was 20. Now I'm 23 and still not married. I guess I'm just an old maid.

NARZ. I've got a bulletin for you, Connie. In America if there were more old maids like you there'd be a lot more old butlers, too. You can bet on that. It's time now to get our first contest underway. Dave, you're going to be out to defend your championship, try to win some more. Connie, you're out to try to take that championship away from him and also win some money for yourself. Before we start the game I'd like to present each of you a nice big box of New Fab with Duratex. There you are, Connie, and there you are, Dave. Now I'd like to wish both of you good luck, and take your positions in front of the Dotto boards, please. May I have the cards for the first game, please. [Fanfare.] Thank you, Carol. Ladies and gentlemen, this is Miss Carol Christian-son, our "Dotto" girl. She's real cute, too, isn't she? Thank you, Carol. [Applause.]

All righty, now let's reveal the \$5,000 "Dotto" picture. Well, as you know, you have the same picture; however, you cannot see each other's. Now for each question you answer correctly a portion of your picture will be filled in. As soon as you recognize the picture, press the signal for "Dotto" because the sooner you identify it, the more you are going to make. We'll pay you \$100 for each dot that remains not connected. We'd like for you to try those signals now. Please, Connie, would you? [Buzzer.] Thank you—and Dave, over there [buzzer]. All righty, they both work. Our first game is underway. Our first category is American poetry. Connie, the more dots you ask for the harder the question will be, and if you miss the question the dots you ask for will be connected in Dave's picture. The first category is American poetry. Would you like to connect 5, 8, or 10 dots?

HINES. 8.

NARZ. Name the 20th century American poet who wrote "The Devil and Daniel Webster."

HINES. Benet.

NARZ. Benet is absolutely right. Here are eight dots for you, Connie. [Fanfare and dots being connected.] Eight connected, 42 unconnected; your picture is worth \$4,200. And Champ, the category, American poetry—5, 8, or 10 for you?

HUSCHLE. I'll try and keep that championship, Jack. I'll try 10 dots.

NARZ. Name the American poet who wrote, the first way, "The Murder of Lidice."

HUSCHLE. Millay. Edna St. Vincent Millay.

NARZ. Edna St. Vincent Millay is right. Here are your 10 connected dots. [Fanfare.] Ten connected for you, Dave, 40 unconnected. The picture's worth \$4,000. And all our questions are verified by the editorial board of the Encyclopedia Americana.

Sculpture is the category this time, Connie; 5, 8 or 10?

HINES. I took it in school; I ought to know something about it. I'll take 10.

NARZ. Ten. All the way. Name the sculptor who created the Statue of Liberty.

HINES. Bartholdi.

NARZ. Bartholdi is absolutely right. Yes, ma'am, 10 more dots for you, Connie. [Applause—fanfare—dots being connected.] Eighteen dots connected, Connie, 32 unconnected. The picture is worth \$3,200. And Champ, the category is sculpture; 5, 8 or 10?

HUSCHLE. I'll try and keep ahead—I'll try another 10, Jack.

NARZ. Many kissed the foot of this statue of Moses which was begun in Rome in 1513. Name the artist who carved it.

HUSCHLE. Gee, the only one I know around that time, Jack—would it be Michelangelo?

NARZ. It would be Michelangelo; yes, sir—10 more dots for you, Dave. [Fanfare—dots being connected.] Twenty connected, Dave, 30 not connected. The picture's worth \$3,000. Connie, the solar system; 5, 8 or 10? You have 18. We'll give you a clue when you have reached 25 connected dots. In order to qualify for that clue you'll have to go for eight.

HINES. I'd better go for eight.

NARZ. Name the comet seen by earthlings every 76 years.

HINES. Halley's?

NARZ. Halley's is right. Yes, ma'am. Just under the wire. Here's more dots and your first clue. [Fanfare.] Twenty-six connected dots. There's a clue—your picture is worth \$2,400, Connie, if you can identify it right now. Champ, the category is the solar system; 5, 8 or 10? You have 20.

HUSCHLE. I'll try the first clue and take five, Jack.

NARZ. What is the Latin term astronomers use for the northern lights? Aurora borealis or Solus Parte?

HUSCHLE. Aurora borealis.

NARZ. You're right. Five dots and a clue. [Fanfare.] Twenty-five connected dots and a clue for you, Dave. Your picture is worth \$2,500.

Connie, the category, world fashions.

HINES. I'll take 10 on that.

NARZ. Ten on that. Being a model. If you answer this correctly you'll get a second clue. You will have connected 36 dots. What do you call the principal garment of a Hindu woman?

HINES. A sari.

NARZ. A sari is right. Ten dots—another clue. [Fanfare.] Thirty-six dots are connected. There is your second clue. Your picture is worth \$1,400. [Buzzer.] OK, you think you know who it is—\$1,000—Connie, just a moment—let me explain to you first, dear—your picture is worth \$1,400. Now if you are mistaken you will have to be eliminated from the game. You understand that, don't you? Dave will not be able to see your answer—step over there and write it out now, Connie. [Fanfare.] You are right—yes, sir. You are right. Now please stand by. Dave, here it is. Your championship is at stake right now. You have 25 connected dots and a clue. We're now going to give you 10 seconds to see if you can come up with an identification and tie up the game. Good luck Dave. (Fanfare for 10 seconds.) Dave your time is up. Who it is?

HUSCHLE. I haven't got an idea, Jack.

NARZ. Have no idea. Connie—

HUSCHLE. All I can guess is J. P. Morgan?

NARZ. I beg your pardon?

HUSCHLE. John P. Morgan?

NARZ. No: I'm sorry, that is wrong. Connie, you are a winner and you win \$1,400. [Fanfare.] That's it. Dave, its too bad, you didn't recognize it. We're going to go ahead and complete your picture for you. I think you will recognize Prime Minister Nehru. That's what Connie identified correctly—she's our new champion. You've been pretty great though, fellow, let's face it. You've been

real grand. You have a lot of money you've won off Dotto. We hope that you enjoy it—I know you will.

HUSCHLE. Right.

NARZ. Dave, thanks for being with us. Good night. Good luck. [Fanfare.] Incidentally, I think this is wrong. Don't look at this. This is not what Dave has won. He has won \$11,600. I don't know how that got up there. That was a mistake.

HUSCHLE. Regardless, Jack, I just wanted to say thank you very much. I have never had anything more exciting or thrilling in my entire life.

NARZ. Thank you, Dave. Good night, Dave.

Connie, as I told you, you've won \$1,400, you're our new champion, and in just a little while we'll have you meet your first challenger. OK?

Please stand by. We'll have Connie meet her first challenger and in just one minute we're going to have our special exhibition game of "Dotto" between Hal March and Johnny Carson.

Mr. LISHMAN. Mr. Huschle, were you instructed before that show to lose to Miss Hines?

Mr. HUSCHLE. Yes, sir.

Mr. LISHMAN. Who gave you that instruction?

Mr. HUSCHLE. Mr. Gil Cates.

Mr. LISHMAN. Who is Mr. Cates?

Mr. HUSCHLE. I believe his position was assistant producer.

Mr. LISHMAN. You appeared on three nighttime shows of "Dotto"?

Mr. HUSCHLE. That is correct.

Mr. LISHMAN. What were your total winnings?

Mr. HUSCHLE. On the nighttime show, \$11,600.

Mr. LISHMAN. On each of these appearances, were you furnished information in advance by Mr. Cates as to what questions you should ask and the answers?

Mr. HUSCHLE. Yes, sir.

Mr. LISHMAN. Were you also furnished, or were you also told, the person who would be shown on the completed "Dotto" picture?

Mr. HUSCHLE. Yes, sir; with the exception of Nehru.

Mr. LISHMAN. You were told to lose that evening?

Mr. HUSCHLE. Yes, sir.

Mr. LISHMAN. Which you did?

Mr. HUSCHLE. Yes, sir.

Mr. LISHMAN. And all this information, Mr. Huschle, was given to you prior to your appearance on the evening show?

Mr. HUSCHLE. That is correct.

Mr. LISHMAN. How much prior to the time you appeared was this assistance given to you?

Mr. HUSCHLE. We were required to be in the studio, I believe, an hour before show time.

Mr. LISHMAN. Where is that studio located, do you remember?

Mr. HUSCHLE. I believe it was—I don't know the name of the theater—it was on the west side of New York, around 63d Street. Columbia or—I don't recall. It was an old motion picture theater turned into a studio.

Mr. LISHMAN. Yes.

Mr. HUSCHLE. As I said, we were required to be in the studio No. 1 to assure our presence would be there, that the show would go on, and we were required to have a runthrough on the stage. In other words, they would locate us and how to operate the "Dotto" button on and do what they call camera rehearsals.

Part of that time also was devoted to a closed-door session with Mr. Cates where we review the question and answers.

Mr. LISHMAN. Did Mr. Cates tell you how many points to ask for?

Mr. HUSCHLE. Yes, he did.

Mr. LISHMAN. I would like to know in a little more detail the manner of the camera rehearsal. How was the camera rehearsal conducted?

Mr. HUSCHLE. The contestants were taken on stage and they were shown how to make the entrance as you saw on the kinescope. They were shown where to stand with Mr. Norris, the master of ceremonies.

After the interview which was semirehearsed, in this particular kinescopic there was nothing to it: in any event we would then be told to walk back to the "Dotto" board, what to do in the event one or both was dotted, how to use the button, et cetera, how to write the name on the viewgraph when you once had the winning number or the winning name.

Mr. LISHMAN. Were you taught how to act?

Mr. HUSCHLE. In this case, sir, no. Apparently from my actions on the daytime show, they were pleased with the way I acted. They would naturally pass on the comments; react to the question, if you know it light up and bring it forth. If you don't know it, take time to think it through or be hesitant about it. Pace yourself.

I felt I was able to do this with the feeling of the audience. If it was an obvious answer, I knew that it was an easy question, I would throw the answer out right away. In many cases it was elementary to give this reflection. At least I thought so.

Mr. LISHMAN. But you were given all the questions and answers during the time that you appeared on these three nighttime performances of "Dotto" with the exception of the last question, when you were told to lose?

Mr. HUSCHLE. With the exception of the last picture, sir.

Mr. LISHMAN. When Mr. Cates told you to lose to Miss Hines, how did he tell you to do it? What words did Mr. Cates use?

Mr. HUSCHLE. He used the expression, "Take the difference."

Mr. LISHMAN. He used what?

Mr. HUSCHLE. The expression "Take the difference." We had spoken beforehand and he said we want you to lose. This will probably be brought up later because it is the old question of budget again. We had arranged that this would be the third and final night and I was to lose. I was told I would lose the week before and the manner in which I would lose was not told to me.

On the last date of the show, the one you saw, it was explained to me that rather than throw me a curve and give you a question you can't answer, we would prefer to give you a picture for you to identify. Mr. Cates said:

I am not going to tell you the name of the picture. If you should hear it in the audience or discover it by your own ways, I ask you not to identify the picture.

As it turned, I did not identify it.

Mr. LISHMAN. Mr. Huschle, you spoke something about Mr. Cates bringing up the need for your taking this difference because of budget pressures. Would you elaborate on that a little, please?

Mr. HUSCHLE. They told me that the budget allowed for each show \$10,000. It would appear to me it would have evened out over 3 weeks. I made an agreement with Mr. Cates to abide by it. I thought I had been treated very fairly on the show by Mr. Cates.

Mr. LISHMAN. Mr. Huschle, how did you happen to appear as a contestant on "Dotto"?

Mr. HUSCHLE. Well, if it please, it would take a few minutes to tell. I was working at the time at nights. I got on the night show as a result of being on the daytime show.

Mr. LISHMAN. When did you first appear on the daytime show?

Mr. HUSCHLE. In February of the same year. The exact date I don't know. I think it was ascertained in the district attorney and the grand jury in New York City.

Mr. LISHMAN. How many times did you appear on the daytime "Dotto" show?

Mr. HUSCHLE. I believe it was 5 days. The actual dates are a part of the testimony of the grand jury.

Mr. LISHMAN. Were you also given the answers in advance on that show in the daytime show?

Mr. HUSCHLE. I was given what you could call preparation. I was not promised the questions and answers we reviewed would be on the show. Some were and some were not. Some questions were asked of me that were not gone over before. Some questions were asked that were.

Mr. LISHMAN. But a good many of the questions that were reviewed with you did appear on that show?

Mr. HUSCHLE. Yes, sir; the exact proportion I don't recall.

Mr. LISHMAN. Were you told in that show in some instances that the finished picture would be?

Mr. HUSCHLE. Again never the specific picture. For instance, it would say would you recognize Mickey Mouse or Lou Costello or whoever it might be. Again those pictures did not always appear.

Mr. LISHMAN. I am very interested in the last way of coaching a contestant.

Mr. HUSCHLE. Perhaps, sir, if I could——

Mr. LISHMAN. Do you mean that Mr. Cates would say to you or someone representing the producer, do you know Mickey Mouse, do you know Tarzan, do you know Henry Wadsworth Longfellow, do you know General Grant. Was it along that line?

Mr. HUSCHLE. Or would you recognize them.

Mr. LISHMAN. Would any pictures of these persons or personalities be there while they were asking these questions?

Mr. HUSCHLE. Only once. That was part of the test to appear on the program. As I said, I was working at nights at the time. My wife and I would watch the "Dotto" show in the morning. I believe it went on at 11:30. Naturally enough I said to my wife, "Gee, I can answer a lot of those questions. I think I am going to try to get on it." It was a joke at home at first. Eventually I went with my brother to the show. He had gone previously with a ticket I could not use. He filled out a card in the audience. The card asked your occupation and your family status. I knew that they were looking for color interest, family things, or things that they could talk about on the air that

would be of interest to the audience. The last night I put in the card I said I would like to challenge my brother on "Dotto." His name had been picked up but he had not been called at the conclusion of the previous show. At the conclusion of this show, my name was called, and I was asked if I could come down front for a brief interview.

At the interview they asked me if I would be available that afternoon for a series of tests and was I living in town, so I could come on the show at any time. I received word from the employer to come in late that day. That very day I took two short answer tests of 150 questions each, I believe.

Mr. LISHMAN. Who gave you those questions?

Mr. HUSCHLE. Those were given to me by part of the staff of "Dotto." Their names I don't recall. They were given to me in a building they have, studios in New York. The examination was given written, and apparently the results of those were obtained very quickly. You were also photographed to see if you were photogenically inclined. Then you were given a personal interview with the people, I suppose how you speak and talk. I thought I was failing this very miserably. They asked what do you mean about your brother. I explained about my brother. They said why do you want to challenge your brother? I said because he is older than I and we have always had certain family competition. They asked about my wife and I told them that she was a model and that she had dated my brother for 2 years before I married her. Apparently this swung them in favor of something interesting and colorful to put on the show. I was called the next day, or the day after, could I please come to New York for an additional interview.

At this interview they showed us pictures that had previously been used on "Dotto" to see if we have perception of identifying a picture through connected dots. Those pictures could have been FDR, Tom Dewey, Dick Tracy. Then I was told to go home and I would be called probably for tomorrow's show.

I got a call later that evening. Would I please appear on the show, and I went in. That was the first instance of "Dotto." Gil Cates was not in charge of the contestants on the daytime show.

Mr. LISHMAN. Who was?

Mr. HUSCHLE. Stan Green. Green or Greer, I am not sure. I believe it is Green. Then they would take us through the actions again on the stage, especially the newer contestants who had not been there before. We signed releases giving them rights to kinescopes and reproductions and such things, then introduced to the master of ceremonies and to the announcer.

The first show I don't recall. It could possibly be that we went through this very, very vague going over of questions, you see. The second show took a longer time. It was in the same format, though. Would you know these people, or are you good in baseball? At no time was I told——

Mr. LISHMAN. Did those people that they asked you about later appear as pictures on the show?

Mr. HUSCHLE. In some cases they did, sir. In some cases they did not.

Mr. LISHMAN. But the pictures that appeared, were they among the ones that you were asked about in advance?

Mr. HUSCHLE. As I say in some cases, yes. In some cases no. They were pictures, the name of which had not been mentioned to me that day. In other words, I had to identify under my own. At no time during this closed door session was I told at what point to "Dotto" or what point to ring a bell.

As a result of the performance on the daytime show, I received a call in June asking if I would like to appear on the nighttime version of "Dotto" where the prizes would be greater and they were well pleased on the show and would like to have me as the opening night contestant.

Mr. LISHMAN. Before you were to appear on the nighttime "Dotto" show, did you meet with Mr. Cates at the Hotel Woodstock?

Mr. HUSCHLE. Yes. He outlined the format of the show, showing how much upgraded it would be, full orchestra, a bigger network coverage, more stations participating. In other words, a more costly production, with higher prizes.

Mr. LISHMAN. Did he tell you that you would win a lot of money on the nighttime show?

Mr. HUSCHLE. He said it is possible for me to win a lot of money. I remember him distinctly telling me in the Woodstock interview for that show, I believe there were two of them, both about the same interest or subject, he said now, "I know on the daytime show you received some assistance from Stan Green. On the nighttime show you are going to be completely on your own. We will be unable to give you any assistance on it."

I told them that was fine with me, whatever he thought. I was happy to do it again because I got an awful big kick out of it. There was a consolation prize of a hundred dollars or so.

Mr. LISHMAN. Was the statement that Mr. Cates then made to you in the Hotel Woodstock true?

Mr. HUSCHLE. It turned out not to be.

Mr. LISHMAN. Is it a fact that on each of the three times you appeared on the nighttime "Dotto" show that you were furnished the answers to the questions and told what the picture would be in advance of your appearance in the evening?

Mr. HUSCHLE. That is true.

I was told the question, the answer, what value question to select, either 5, 10, or 15. Was it 5, 8, or 10 dots. And at what point to "Dotto."

Mr. LISHMAN. Were you surprised when Mr. Cates, having told you at the Hotel Woodstock that you would receive no assistance in the "Dotto" show, proceeded to see that you got more assistance on the nighttime show than you had received on the daytime show?

Mr. HUSCHLE. Yes, sir; I was quite surprised.

Excuse me, if I may. In so telling me, Mr. Cates had said, of course, whether these are his exact words, competition or the pressure is so great to make this show a success, we have to insure that it will go over. We have received almost 2,000 pieces of mail in favor of you as a contestant. We want to have you here for the opening night. Because so much is riding on the success of this program, we want you to work with us on it.

I should also point this out at this time. Mr. Cates went very far out of his way to tell me that I should never once mention to him the possibility of rewarding him for my winnings. Don't you ever men-

tion the word "remuneration" or "kick-back" to me, because if you do I will have to report it and we will have you taken off the show. I told him no thought ever entered my mind.

Mr. LISHMAN. In other words, Mr. Cates told you that the result of a popularity poll based on your daytime appearance that he had chosen you, or the people had chosen you, as the one to be fixed?

Mr. HUSCHLE. Well, I don't know that he said it exactly that way. He said they had chosen you to be on the show because of your popularity. It was not me that was going to be fixed apparently.

Mr. LISHMAN. It meant to Mr. Cates that you were the person that he wanted to fix?

Mr. HUSCHLE. That is right.

Mr. LISHMAN. Before you testified before the grand jury, did Mr. Cates or any representative of the "Dotto" production talk with you?

Mr. HUSCHLE. No, sir; they did not.

When they first announced the hearings in the grand jury, and then when I was subpoenaed, I called first Gil Cates and asked him what the story was, whether he was going down, whether he had been called. I don't recall; I think he said he had been called.

I said, well, Gil, I have no choice in this matter, but to tell the truth. He said that is the only thing you can do and that is the only thing I expect you to do.

I said that is fine, I wanted you to know that is what I was going to do.

About the same time I called the Frank Cooper office and I spoke with Mr. Si Fisher. In so speaking to Mr. Fisher I told essentially the same thing I told Mr. Cates. I was asking whether or not any legal advice was going to be given to the contestants from the show. I told him this was all new to me. I never appeared before a grand jury before. In fact, I didn't know how to behave. If there was any legal advice that will help you or me, is it going to be forthcoming?

He said why would I need it. I told him obviously because of the assistance I got on the show. On the telephone, which is the only time I had spoken to him after the show, he sounded very interested or that it was the first time he had heard that I had been tampered with or coached.

He said, "You mean you were?"

I said, "That is right."

He said, "This is the first I ever hear about it."

I told him that is quite possible. Again I would just like to know if the Frank Cooper Associates were going to give any counsel to the contestants on the show. They said nothing was forthcoming.

Then I told him I was going on my right and tell the truth. He said "That is exactly what we expect."

Mr. LISHMAN. On the nighttime show, over what network did that go?

Mr. HUSCHLE. NBC, but I was not sure myself because the morning show was CBS and I sometimes get them mixed up. But it was on NBC.

Mr. LISHMAN. Did anybody from either network come to you at any time and inquire whether you had been given questions and answers and coaching in advance of your appearance on the show "Dotto"?

Mr. HUSCHLE. From the network, sir?

Mr. LISHMAN. Yes.

Mr. HUSCHLE. No.

Mr. LISHMAN. Or any representative of the network?

Mr. HUSCHLE. No, sir, never.

Mr. LISHMAN. Did anybody else know besides Mr. Cates, did Mr. Green know that you had been given these questions and answers in advance?

Mr. HUSCHLE. No.

Mr. LISHMAN. Were you told that your opponent Miss Hines had received similar coaching assistance?

Mr. HUSCHLE. I don't know that I was told she received assistance. However, all the contestants were taken into a meeting the same as I had with Mr. Cates, or in the daytime show with Mr. Green.

However, I was told that Miss Hines would win this and she would go on such and such a question. I asked Mr. Cates, what happens if she goofs, if she doesn't come up with the answer? By all means, then you will go ahead and Dotto because it becomes so obvious that you have to get it. It is a very difficult picture and from the clues I don't think you will get it in with one clue.

Mr. LISHMAN. Are you familiar with the fact that the master of ceremonies had four questions that he could ask?

Mr. HUSCHLE. I believe it was three, sir. There was a five, eight or ten Dotto selection.

Mr. LISHMAN. You are not familiar with the fact that there was a so-called extra question or what was known as a kicker which they could use in an emergency to dump someone from the program?

Mr. HUSCHLE. No, sir; I was not familiar with that.

Mr. LISHMAN. We will develop that by other witnesses.

I am through with this witness, Mr. Chairman.

The CHAIRMAN. Mr. Mack, do you have any questions?

Mr. MACK. How much money did you win on this program?

Mr. HUSCHLE. On the evening show, sir, I won \$11,600. On the daytime show, I won \$3,700.

Mr. MACK. And they paid you the full amount that you won?

Mr. HUSCHLE. Yes, sir; very promptly.

Mr. MACK. Thank you.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS. Mr. Huschle, how many times were you on the program?

Mr. HUSCHLE. On which, sir; the morning or the evening?

Mr. ROGERS. On both.

Let us take the morning first.

Mr. HUSCHLE. I believe it was 5 days.

Mr. ROGERS. Five days?

Mr. HUSCHLE. Yes, sir.

Mr. ROGERS. What station were you appearing on?

Mr. HUSCHLE. I am not sure. It is a CBS network.

Mr. ROGERS. I mean the station. Do you remember the call letters of the station?

Mr. HUSCHLE. No, sir. It is either two or four, I am not sure, in New York City.

Mr. ROGERS. In New York City?

Mr. HUSCHLE. That is right. It is a CBS network in New York City.

Mr. ROGERS. How long were you on the night show?

Mr. HUSCHLE. Three successive weeks.

Mr. ROGERS. When did you first find out that these shows were not a true representation of what they were supposed to portray?

Mr. HUSCHLE. Sir, if you mean when did I first receive assistance, it was about the second day on the show.

Mr. ROGERS. The second day?

Mr. HUSCHLE. That is correct.

Mr. ROGERS. Did you conclude at that time that there was some fraud associated with this?

Mr. HUSCHLE. In my own mind I have never associated it as being fraud.

Mr. ROGERS. You have never associated it with fraud?

Mr. HUSCHLE. No, sir.

Mr. ROGERS. You mean that you don't think it is fraudulent now for the people to be led to believe that a contest of wits is going on and the truth about the matter is that both contestants know what the questions and answers are going to be?

Mr. HUSCHLE. That is right, sir.

Mr. ROGERS. You don't think that is fraudulent?

Mr. HUSCHLE. In my own mind I am not convinced that it is.

Mr. ROGERS. Do you think "taking a difference" is fraudulent?

Mr. HUSCHLE. No, sir, not for the purpose intended.

Mr. ROGERS. Are you familiar with all the scandals that have arisen in boxing?

Mr. HUSCHLE. I am, sir.

Mr. ROGERS. Do you think that is fraudulent?

Mr. HUSCHLE. I do.

Mr. ROGERS. You do?

Mr. HUSCHLE. I do.

Mr. ROGERS. Basketball?

Mr. HUSCHLE. Yes, sir.

Mr. ROGERS. Are you familiar with the old Black Sox scandal in baseball?

Mr. HUSCHLE. Vaguely.

Mr. ROGERS. Do you think those are fraudulent?

Mr. HUSCHLE. I do.

Mr. ROGERS. But you don't think that this is fraudulent?

Mr. HUSCHLE. I am not convinced of it; no, sir.

Mr. ROGERS. What do you mean, you are not convinced of it? I want to get the difference in our moralization there.

Mr. HUSCHLE. Well, sir, my moralization—I am not asking anyone else to believe, it is something I feel myself—my moral conviction on this, and believe me I have thought of it quite often, was that, No. 1, we are dealing here with an entertainment medium. I am not in the entertainment business and never have been. We are dealing in an entertainment medium. And to entertain, a show must be either interesting or not.

Mr. ROGERS. That same thing is true of baseball, basketball, football, and boxing.

Mr. HUSCHLE. That is exactly true. But you have salaried people who are living on these salaries.

Mr. ROGERS. I can't hear you.

Mr. HUSCHLE. I said these are salaried people who are making their living out of sports and baseball. I am not a salaried person making my living out of entertainment, but I was given that opportunity to do so.

Mr. ROGERS. The boys who were playing basketball for colleges were not salaried people, at least they were not supposed to be, and my understanding was not.

Mr. HUSCHLE. I agree with you, they were fraudulent. I am trying to develop my own point.

Mr. ROGERS. Did the \$11,000 have anything to do with your morals involved in this?

Mr. HUSCHLE. It led me to think more and more about my morals in it.

Mr. ROGERS. You mean that if you had thought it was fraudulent you would not have taken the \$11,000 or the \$3,000?

Mr. HUSCHLE. That is exactly right, in my own mind.

Mr. ROGERS. When you decided to tell about this, when you got the matter told to people who are investigating it, did it make you feel cleaner?

Mr. HUSCHLE. No, sir.

Mr. ROGERS. Why had you been worried about it?

Mr. HUSCHLE. Because, as I said before, I am not sure that a fraud nor am I positive in my moral convictions. If I can continue, perhaps I can throw some light on the way I feel this way.

Mr. ROGERS. I didn't hear you.

Mr. HUSCHLE. I said perhaps if I can continue, I can throw a little light on why I feel this way.

Mr. ROGERS. You mean continue to talk here?

Mr. HUSCHLE. If you are interested.

Mr. ROGERS. You mean continue to win money on the program. I don't understand what you are going to continue to do.

Mr. HUSCHLE. You asked me before if I thought that taking a dive or being coached on answers on a quiz show was fraudulent.

Mr. ROGERS. Yes.

Mr. HUSCHLE. I said "No, sir, not in my own conviction." May I continue?

Mr. ROGERS. Go ahead.

Mr. HUSCHLE. Then you asked if I thought baseball and sports, et cetera. I agreed with you in every instance with this one exception. If I may, I would like to continue to develop that point if you are interested in hearing it. As I said, this is an entertainment medium. This is a medium that I was thrown into as an entertainer suddenly. It developed into that. I can tell from the audience reaction in the theater that they enjoy this performance. I could tell from the people who had seen me at home that they enjoyed the performance. They thought it was excellent. When you go into a quiz show where there is no limit on the amount of winnings a contestant can take home, you are immediately faced with control. We saw that yesterday in the testimony where there was a control of \$10,000 per program. One way or another, it is controlled. We saw it when a man from NBC was fully cognizant of the fact of the contract the Pharmaceuticals, Inc., had where he knew that there was a control on the program.

Mr. ROGERS. Wait just 1 minute. You said an NBC man knew that there was a control on the program.

Mr. HUSCHLE. In the sense that the contestants budget allowance was \$10,000 a week in winnings on "Twenty-one."

Mr. ROGERS. Is that the sole basis of your statement that an NBC man knew that there was control?

Mr. HUSCHLE. His testimony, yes.

Mr. ROGERS. His testimony about the amount of money?

Mr. HUSCHLE. That is right.

Mr. ROGERS. Go ahead.

Mr. HUSCHLE. Therefore, we know, and the viewers at home must know, that there is a limit on the winnings that you can have. Certainly there was in \$64,000. Before I went on the show I took three tests. Two of them were intelligence tests, one was a photographic test, and the other was a perception test. It became a point where the producers knew not only what I knew, but they knew also what I did not know to a major point. To a reasonable point. They never threatened to dump me or to throw a curve ball one way or another.

Mr. ROGERS. You said they never did?

Mr. HUSCHLE. No, sir. If they were going to do it, they would tell me so. Eventually on the nighttime show they told me that this budget had been reached.

Mr. ROGERS. That is the time they told you they were going to throw you a curve or dump you?

Mr. HUSCHLE. They never at any time said they would throw me a curve or dump me. They would never embarrass me. At the end of 3 weeks, they said this is the way we would like you to go off the show. In order for a show to be entertaining, it must have a sustaining interest. You people on the bench and myself have got to associate ourselves with Mr. Van Doren or Mr. Stempel or someone like that. Therefore, the producers of the show must have a way of keeping the contestants around or else there is no entertainment. The audience loses interest. If I had been pitted against Einstein, the show would be meaningless.

Mr. ROGERS. I understand you to say that as long as the show is entertaining that the questions of morals and honesty insofar as the viewing public is concerned is secondary?

Mr. HUSCHLE. No, sir, they are not secondary. But in witnessing the show and watching it, they are being entertained. Unless the producer or whoever it is that is running the show can make it entertaining, they flop and the audience does not look. Therefore, the audience at home is not going to be entertained.

Mr. ROGERS. You mean if he cannot make it entertaining without resorting to dishonesty or immoral practice, then he is free to do that, to be sure that it is entertaining?

Mr. HUSCHLE. If you wish to consider it immoral.

Mr. ROGERS. Is that your feeling? That is what I want to know.

Mr. HUSCHLE. No, sir; it is not. In other words, I don't feel that anyone has been deceived or duped, really, and if so, what is it that they have been duped of?

Mr. ROGERS. You don't feel that anyone has been duped or deceived?

Mr. HUSCHLE. That is right. The audience has.

Mr. ROGERS. The audience has?

Mr. HUSCHLE. If they believe they are watching a 100 percent honest show. But still they are being entertained as much as they are being entertained in a wrestling match.

Mr. ROGERS. The reason they are being entertained is because they don't know the truth about the thing, isn't it?

Mr. HUSCHLE. That is right. If the truth were known there would be no entertainment.

Mr. ROGERS. It would not be entertainment.

Mr. HUSCHLE. There would not be any entertainment.

Mr. ROGERS. So unless you have a taint of dishonesty on this thing, no one will watch the show and you could not sell these products.

Mr. HUSCHLE. That is right, and you could not put the show on without a reasonable amount of control. That is the point I was trying to make.

Mr. ROGERS. The control was when they told you to take the dive—did you know the answer to that question?

Mr. HUSCHLE. It was a question I missed on.

Mr. ROGERS. I mean the picture. Did you know the man?

Mr. HUSCHLE. I did not.

Mr. ROGERS. If you had known him, would you have given his right name?

Mr. HUSCHLE. Not at that point of the game. The only way I would have given the name if I got the second clue and it got obvious that the girl was not going to identify it. In other words, it would have been a last resort.

Mr. ROGERS. In other words, you joined with them in the dive you were taking?

Mr. HUSCHLE. Yes, sir.

Mr. ROGERS. Thank you very much, Mr. Chairman.

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. Mr. Huschle, how old are you?

Mr. HUSCHLE. I am 28.

Mr. DEVINE. Where do you live?

Mr. HUSCHLE. In Long Island, N.Y.

Mr. DEVINE. Where in Long Island?

Mr. HUSCHLE. Green Cove.

Mr. DEVINE. Mr. Huschle I didn't quite understand how you originally appeared on the afternoon "Dotto" program? How did you happen to get on that?

Mr. HUSCHLE. On the morning show I filled out a card in the audience and was selected from the audience.

Mr. DEVINE. What is your formal education?

Mr. HUSCHLE. Four years of college with a bachelor of arts degree, sir.

Mr. DEVINE. Where?

Mr. HUSCHLE. With a bachelor of arts degree.

Mr. DEVINE. When did you receive that?

Mr. HUSCHLE. 1952.

Mr. DEVINE. Would you care to mention the name of the university or college?

Mr. HUSCHLE. Adelphia College in Garden City, N.Y.

Mr. DEVINE. Are you married? Do you have a family?

Mr. HUSCHLE. I do.

Mr. DEVINE. When Mr. Rogers was questioning you as to your morals in connection with this, whether you considered it a fraud, you spoke of the entertainment field, and I am not making an indictment of any type of athletic endeavor, do you compare your participation on this "Dotto" program similar to the television entertainment of a sport known as wrestling?

Mr. HUSCHLE. No, sir. Perhaps I don't want to indict wrestling either, but wrestling matches are put on. I don't mean collusion wrestling. Those that are billed wrestling exhibition. I think it is common knowledge that they are arranged. It is not true wrestling.

Mr. DEVINE. I am sure that there are some people in some fields that may feel some of these television wrestling matches, that the results, have probably been determined in advance, and it is an entertainment feature.

Mr. HUSCHLE. That is correct, sir.

Mr. DEVINE. Do you more or less justify your feeling on your "Dotto" program similar to that type of entertainment?

Mr. HUSCHLE. Yes, in that vein. I don't pretend to compare it at all to sports or basketball, as Mr. Rogers said. I should think, though, also there is the idea of an entertainer, although I was highly paid.

Mr. DEVINE. Thank you.

The CHAIRMAN. Is there anything else?

Mr. LISHMAN. No, sir.

The CHAIRMAN. Thank you very much, Mr. Huschle, for your appearance here. You may be excused.

Mrs. DuBarry Hillman.

Mrs. Hillman, will you be sworn, please? Do you solemnly swear the testimony you give to this committee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mrs. HILLMAN. I do.

The CHAIRMAN. Will you please have a seat.

Mrs. Hillman, will you state your full name for the record?

TESTIMONY OF ANTOINETTE DuBARRY HILLMAN

Mrs. HILLMAN. Antoinette DuBarry Hillman.

The CHAIRMAN. What is your address?

Mrs. HILLMAN. 12 East 47th Street, New York City.

The CHAIRMAN. Do you have an occupation or business or profession?

Mrs. HILLMAN. No.

The CHAIRMAN. Are you familiar with what is referred to commonly as the "Dotto" show?

Mrs. HILLMAN. Yes.

The CHAIRMAN. Were you a contestant on the show?

Mrs. HILLMAN. Yes, I was.

The CHAIRMAN. When?

Mrs. HILLMAN. In February 1958. It was around the 22d or 23d, somewhere in there.

The CHAIRMAN. How many times did you appear on the show?

Mrs. HILLMAN. Five times.

The CHAIRMAN. Consecutively?

Mrs. HILLMAN. Yes. Well, there was a weekend intermission, but 5 actual days.

The CHAIRMAN. Very well, Mr. Lishman, you may proceed.

Mr. LISHMAN. Mrs. Hillman, you appeared on the daytime "Dotto" show?

Mrs. HILLMAN. Yes, I did.

Mr. LISHMAN. If I told you that you appeared on that show on February 20, February 21, February 24 and February 25, in 1958, would that be correct?

Mrs. HILLMAN. I think so.

Mr. LISHMAN. Before you appeared as a contestant on "Dotto," did anyone furnish you with questions and answers in advance of the show, and on occasion also tell you the name of the person who would be represented in the finished picture?

Mrs. HILLMAN. Well, in a very—yes. Specifically, yes. It was not done that precisely.

Mr. LISHMAN. Your answer is yes, and we would like to have you explain how it was done.

Mrs. HILLMAN. Each morning we would go to the studio. We would each be taken separately by Stan Green into a dressing room.

Mr. LISHMAN. Was it always Mr. Green that would do this?

Mrs. HILLMAN. With me it was. He would say, for instance, what do you know about baseball. Then you would say what? He would say, well, who has a home run record, and you would say Babe Ruth. Then he would ask a couple of other questions about baseball. Then he would say if you don't know, for instance, oh, certainly you know, it is Joe DiMaggio. Then he would say, how would you recognize Mickey Mouse? You would say he has little bitty ears and a button nose and so forth. Actually the first day I was on the show he did throw me a curve and I think quite inadvertently, because he asked me in the preliminary thing how I would recognize Victor Borge. We went through this bit. Then when I got on the show and was answering the questions, I got my first clue and it was Danish. I didn't think too much about that. Then the second clue was a musician. How many Danish musicians do you know? I couldn't believe it was possibly the man he mentioned because I thought this was all very upright.

Mr. LISHMAN. Up to that point you thought it was honest?

Mrs. HILLMAN. Yes, I really did. Some of the questions sounded a little familiar to me, but I thought they were being kind. It was my first day around. Finally I had to give in and say Victor Borge. I was right and won. When I went off the stage I popped over to Mr. Green and started to thank him, and he said hush, hush. From then we played the whole thing like a solemn minnet, like everybody bowing and smiling and taking you back and forth and pretending nothing at all was going on. We would have these little talks, but we never came clean with each other. We got very cozy. Nice man and everything else. We pretended nothing else was done.

Mr. LISHMAN. You pretended you didn't know what Mr. Green was doing, and he pretended he didn't know what you were doing?

Mrs. HILLMAN. That is right.

Mr. LISHMAN. It is certainly a make-believe world, I can see that. It is a fact that you were given the questions and answers by Mr. Green on each and every time that you appeared?

Mrs. HILLMAN. Up until the last day.

Mr. LISHMAN. Were you told on the last day that your services as an actress would no longer be required?

Mrs. HILLMAN. That is a perfect way of putting it. That morning when I went in the little room with Mr. Green, he said today you can go on cold.

Mr. LISHMAN. He said what?

Mrs. HILLMAN. He said today you go in cold. We sat and had a cigarette and chatted perfectly amicably, and went in cold and missed totally on the picture. Those "Dotto" pictures were hopeless unless they did give you a little help.

Mr. LISHMAN. You mean without a clue it would be almost impossible for a normal person to recognize them?

Mrs. HILLMAN. I think so.

Mr. LISHMAN. I think at this time, Mr. Chairman, I would like to have a kinescopic reproduction of part of the "Dotto" show in the daytime for February 25, 1958, in which Mrs. Hillman, the witness, appeared as a "contestant."

(Showing of kinescope.)

Mr. LISHMAN. Mrs. Hillman, after your appearances on "Dotto"—first of all I will ask you this question—was that an accurate reproduction of what actually happened during the time you were on "Dotto"?

Mrs. HILLMAN. Certainly.

Mr. LISHMAN. On February 25, 1958?

Mrs. HILLMAN. Yes, sir.

Mr. LISHMAN. I would like to ask at the appropriate time when the transcript is completed, the sound portion be included in the record.

The CHAIRMAN. Without objection, it will be included.

(Transcript of the sound track follows:)

"ANNOUNCER (Ralph Paul). From among the thousands of postcards we've received, one of you now listening will receive a phone call. Stand by. In just a few moments, you'll be asked if you can identify the famous face between these dots. If you can—if you can tell us who this is, you'll win a truly fabulous prize—a fleet of boats for an exciting summer on the water. All you have to do is watch—watch these dots. [Fanfare.]

"D-o-t-t-o" (spelled out with musical background). "Dotto." The exciting new quiz game, brought to you by Florient Air Deodorant. Kills bad room odors fast. And here's your host for "Dotto"—Jack Narz. [Fanfare.]

NARZ. Thank you. Thank you all, very much. Thank you very much indeed, and on behalf of Florient—welcome to "Dotto." Again we turn dots into pictures and pictures into dollars. Now in just a little while, we'll be making another telephone call to see if one of our viewers out there can win that fabulous prize—a fleet of boats. Meantime, I think we have a very exciting game for you first off today. We're going to be playing double double dotto. These folks have been on our show previously, but let's have Ralph Paul introduce them again. Ralph, please.

ANNOUNCER. Jack, returning for the fifth day, Florient Air Deodorant welcome back our champion, a former reporter from Grand Rapids, Mich.—Mrs. DuBarry Hillman—and her challenger who has tied her three times, a writer

ANNOUNCER. And so, here we are, three tie games later. In a moment we'll be playing double double dotto. We'll be paying the winner \$80 for each unconnected dot in his or her picture at the time of identification. That means the pictures when you see them this morning will be worth \$4,000. Now, DuBarry, you have relieved our budget so far of \$1,460, in spite of the fact that—ah—you told me your husband calls you lazy. Now, what does he say now, that you've come home a winner?

HILLMAN. Now he thinks I'm lazy and rich.

NARZ. Lazy and rich. Does he [laughter]—does he have any other complaints? from New York City, Mr. Joseph Rosler. [Applause.]

HILLMAN. Well, he—ah—leaves a little odd reminder around the house for me. You know—notes?

NARZ. Oh, you mean to remind you to do things?

HILLMAN. Yes, all kinds of things.

NARZ. Well, let him leave the notes. Don't you leave that one for \$1,460 lying around or you won't see much of it.

Now, sir, yesterday you told us that—ah—you told us how you became a writer; however, I didn't get a chance to ask you what kind of things you write.

ROSLEK. Well, I usually write articles for women's magazines.

NARZ. Well, for example.

ROSLEK. Well, I did one recently on "How a Woman Can Read a Man's Character."

NARZ. "How a Woman Can Read a Man's Character"? Well, how can a woman read a man's character? Tell it to me.

[Laughter.]

ROSLEK. I was gonna say—one way is, by the way he dresses.

NARZ. Uh huh.

ROSLEK. Ah—

NARZ. Well, pick ah—pick ah—an example of—

ROSLEK. Some men for instance—uh—well, some men for instance will wear both suspenders and a belt.

NARZ. Well, what would that—ah—indicate?

ROSLEK. Oh—one thing it would indicate is that he's rather conservative.

NARZ. Either that, or his pants are too darn big—one of the two. [Laughter.]

He isn't even a man's man—and he's already analyzing men here for you. Well, I'll tell you what—we'll get to our double double dotto match in just a moment—but right now: Ladies, when cooking, smoking or other household odors become offensive, here's Colgate's tip on what to do.

ANNOUNCER. Colgate's Florient presents "Then and Now". In ye good old days, the housewife led an easy life. In her spacious log home she found cooking delightful. It was so fragrant—all smells blended together. Not only cooking but other odors as well. If the family didn't like it, they knew what to do. But, that was before the days of Florient—Colgate's new aerosol air deodorant. Now whenever odors of cooking, pets in the house, or smoking, become offensive, today's housewife knows that one spray of Colgate's Florient will immediately make the air small flower fresh. Yes, Florient kills bad odors fast, and now comes in four fragrances. The popular Floral, new tangy Spice, refreshing Mint, or zesty Pine. Only Florient gives you this choice. Get Florient today. No wick, no wait, no waste.

NARZ. We'd like to ask you to try this terrific air deodorant, Florient. It now comes in four fragrances, incidentally—Floral, Spice, Mint, or Pine. There you are, Joe; there you are, DuBarry. It's time to get our big match under way. Good luck to both of you. Remember we'll be paying \$80 for each unconnected dot—double double dotto. So good luck to you both. Step back to the dotto boards, please.

[Music.] Now let's reveal those dotto pictures. Today—worth \$4,000. [Chimes.] Joe and DuBarry, as you know, you have identical pictures—however, one cannot see the other's. Now as soon as you recognize the picture, press the signal for dotto—because, the sooner you identify the picture, the more money you'll make. You'll be paid \$80 for every dot that remains unconnected. Joe, would you try the dotto button, please. [Buzz.] Fine, it works. And DuBarry. [Bell.] Okay, we're all set to go. You're still in the role of a challenger, Joe, and our first category—European literature. Would you like to try to connect 5, 8, or 10 dots in this picture?

ROSLEK. I think I'll go for 10, Jack.

NARZ. All righty. What English novelist wrote "Tess of the D'Urbervilles"?

ROSLEK. Uh—that's—ah—Thomas Hardy.

NARZ. Yes, sir, you are right. And there are 10 dots for you, Joe. [Applause.]

[Music.]

There we are. Ten connected dots in your picture. Forty unconnected. Your picture worth \$3,200. Let's try for that fast identification now. DuBarry, European literature is our—ah—category. A 5, an 8, or a 10 for you?

HILLMAN. I'll have to take 10 on that.

NARZ. Gonna try to stay up with Joe, huh?

HILLMAN. Stay up with Joe.

NARZ. What English novelist wrote "Outcast of the Island" and "Victory"?
HILLMAN. Joseph Conrad.

NARZ. Yes ma'am, you're right. Here are 10 dots for you.

[Applause.] [Music.] And, we're all tied up with 10 dots each. The pictures are worth \$3,200. Incidentally, all our questions are verified by the—ah—the editorial board of the Encyclopedia Americana. And, Joe, our next category is famous TV friends. Would you like to try for 5, 8, or 10 on this one?

ROSLER. I think I can chance 10 again, Jack.

NARZ. Okay. What is the name of the famous heavy-set soldier, named for a type of dog, who is a friend of Sergeant Bilko?

ROSLER. Oh—ah—that's—ah—Doberman.

NARZ. Yeah, that's right. Doberman is right. Here's 10 more dots for you, Joe. [Applause.] [Music.]

Well, there we are. Twenty connected dots on your picture. Thirty unconnected. Your picture worth \$2,400.

Champ, the category—famous TV friends. A 5, an 8, or a 10 this time?

HILLMAN. I'll try another 10.

NARZ. Another ten. Name the actress who played the wife of Jackie Gleason in the "Honeymooners."

HILLMAN. Audrey Meadows.

NARZ. Yes, ma'am, you're right. There's 10 more dots for you, DuBarry. [Applause.] [Music.]

Okay, we're still all tied up—with 20 connected dots each—30 unconnected—the picture's worth \$2,400. And, Joe, this time, remember you can get your clue at the 25th dot. And, our category—American Territories. Would you like to go for 5, 8, or 10 this time?

ROSLER. Well, I could probably use 10—but—ah—I think I'd better try the 8.

NARZ. All righty—8—and if answered correctly, will, of course, give you your first clue. Name the vast tract of land in the central United States purchased from France for \$15 million.

ROSLER. Oh, that's the—ah—the Louisiana Purchase.

NARZ. Yes, sir. You're right. [Applause.] Eight more dots for you, Joe. And your first clue. [Music.] There you are—with 28—

ROSLER. Oh—

NARZ. Connected dots—and the clue.

ROSLER. [Buzzer.]

NARZ. And—you think you know who it is. Okay, we'll hold everything here, and give Joe a chance to identify this picture. Joe, with 22 unconnected dots in your picture, it is worth \$1,760. As you know, if the identification is wrong, you'll be eliminated from our game. Now, DuBarry will not be able to see your answer. Will you step over to the Dottograph and write the name? [Music.] Yes, sir—you are right. [Applause.] You are absolutely right, Joe. That's who it is. Now please stand by.

DuBarry, Joe has correctly identified this picture. As you know, in order for you to stay in our game, you must come up with an identification at this time. If you do, we'll have another tie game; we'll go on to play hundred dollar "Dotto." We're going to give you 10 seconds to think it over, DuBarry. Good luck. [Music.]

DuBarry, time is up. Do you have any idea who it might be?

HILLMAN. I—I really don't. But I'm going to say John Foster Dulles.

NARZ. No, I'm sorry, that is wrong. And that means we have a new "Dotto" champion over here—Mr. Joseph Rosler. [Applause.] [Fanfare.]

Congratulations, Joe. Be with you in just a moment.

Well, DuBarry, unfortunately, it was not John—you said John Foster Dulles. It's Andy Devine. Andy Devine.

HILLMAN. [Laughter.]

NARZ. Jingles—on television.

HILLMAN. I really didn't get it. [Laughter.]

NARZ. You didn't get it. Well, that's too bad. However, DuBarry, you've done very well on our show. You've won \$1,460.

HILLMAN. I know it. I know it.

NARZ. Maybe that'll help out with Dodger's operation.

HILLMAN. It'll help out a lot.

NARZ. Good. Thank you so much for being with us, DuBarry—you're a wonderful contestant. Bye Bye. Good luck.

HILLMAN. Thank you so much, Jack. [Applause.]

Mr. LISHMAN. After your final appearances as an actress on "Dot-to," did your husband write an article for Time magazine on TV quiz shows?

Mrs. HILLMAN. Yes. This was after the story broke in August 1958.

Mr. LISHMAN. Did he obtain some of his information from you?

Mrs. HILLMAN. Certainly.

Mr. LISHMAN. Colgate-Palmolive-Peet were the sponsors of this program, were they not, while you were there?

Mrs. HILLMAN. I think so.

Mr. LISHMAN. Did any representative of the CBS network at any time come to you to inquire as to whether or not you had been furnished the questions and answers in advance?

Mrs. HILLMAN. No.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS. Mrs. Hillman, how long were you on the show?

Mrs. HILLMAN. Five days.

Mr. ROGERS. Five days?

Mrs. HILLMAN. Yes.

Mr. ROGERS. Did you know about it from the first day that you went on, that there were some practices going on that were not exactly in the knowledge of the people watching the show?

Mrs. HILLMAN. Yes. Certainly I was surprised myself.

Mr. ROGERS. You say you were surprised?

Mrs. HILLMAN. Yes.

Mr. ROGERS. On the first day?

Mrs. HILLMAN. Yes.

Mr. ROGERS. But you did continue on the show?

Mrs. HILLMAN. Certainly.

Mr. ROGERS. How much money did you make?

Mrs. HILLMAN. \$1,460.

Mr. ROGERS. \$1,460?

Mrs. HILLMAN. Yes.

Mr. ROGERS. Did it ever occur to you, Mrs. Hillman, or did you think about it from a moral standpoint what you were doing might be taking part in something that was fraudulent insofar as the American public was concerned?

Mrs. HILLMAN. I really didn't.

Mr. ROGERS. You say you really didn't?

Mrs. HILLMAN. No.

Mr. ROGERS. Have you ever worried about about what you did?

Mrs. HILLMAN. Honestly, I am perfectly blithe about it.

Mr. ROGERS. You think it was all right?

Mrs. HILLMAN. Yes.

Mr. ROGERS. Nothing wrong with it as long as you can make the people believe that you are being honest; that answers the question.

Mrs. HILLMAN. They were having a happy time; so was I. Everybody was.

Mr. ROGERS. As long as they are having a happy time. Would you think that same thing applied to contests in football or baseball or basketball or boxing?

Mrs. HILLMAN. No. Because those are genuine sporting events. They are not put on per se as an entertainment. Wrestling, I think, is a perfectly good analogy.

Mr. ROGERS. Mrs. Hillman, are you not making a distinction between the mental processes and the physical athletic processes?

Mrs. HILLMAN. Yes.

Mr. ROGERS. In other words, this was supposed to be a battle of wits, was it not?

Mrs. HILLMAN. Yes.

Mr. ROGERS. In a contest of boxing, it is a battle of fists?

Mrs. HILLMAN. Certainly.

Mr. ROGERS. What is your distinction?

Mrs. HILLMAN. Just that most boxers don't have sponsors.

Mr. ROGERS. Do not have what? Would you say that again?

Mrs. HILLMAN. I said most boxers don't have sponsors.

Mr. ROGERS. There was some question about that in some recent revelations I think concerning the boxing situation as well as basketball, and one or two times in baseball and some other sports.

You feel that as long as it is entertainment, it makes no difference whether it is honest or dishonest insofar as the participants are concerned, if the people are entertained?

Mrs. HILLMAN. I really don't. I don't think it is that serious.

Mr. ROGERS. You do not think it is serious at all?

Mrs. HILLMAN. No.

Mr. ROGERS. You do not think this situation is serious with regard to the "Twenty-one" show?

Mrs. HILLMAN. It may have implications in terms of, you know, advertising, all that kind of thing. I never thought of that as a contest. I didn't have any moral qualms about it.

Mr. ROGERS. Of course, they got caught.

Mrs. HILLMAN. I don't mean that at all.

Mr. ROGERS. If they had not got caught, the advertising phase of this would not have been affected?

Mrs. HILLMAN. No. Listening yesterday I could realize that it might make it very difficult for a rival firm to come up with a sprightlier program.

Mr. ROGERS. Do you volunteer your testimony or did someone come to discuss this with you?

Mrs. HILLMAN. Here?

Mr. ROGERS. Your testimony here.

Mrs. HILLMAN. Yes. Mr. Howze came to see me.

Mr. ROGERS. Were you called before the New York grand jury?

Mrs. HILLMAN. Yes.

Mr. ROGERS. You were subpoenaed to appear there?

Mrs. HILLMAN. Yes.

Mr. ROGERS. Thank you very much.

The CHAIRMAN. Thank you very much for your voluntary appearance here.

Mrs. HILLMAN. Am I excused?

The CHAIRMAN. Yes, you may be excused.

Mrs. HILLMAN. Thank you.

The CHAIRMAN. Mr. Edward Hilgemeier. Will you be sworn?

Do you solemnly swear the testimony you give this committee to be the truth, the whole truth and nothing but the truth, so help you God?

TESTIMONY OF EDWARD HILGEMEIER, JR.

Mr. HILGEMEIER. I do.

The CHAIRMAN. Will you have a seat?

Will you state your full name to the committee?

Mr. HILGEMEIER. Edward Hilgemeier, Jr.

The CHAIRMAN. What is your address?

Mr. HILGEMEIER. 82-39 134th Street, Hugh Gardens 35, New York.

The CHAIRMAN. What is your business or profession?

Mr. HILGEMEIER. I am a comedian, sir. I am honest.

The CHAIRMAN. Are you employed now?

Mr. HILGEMEIER. No, sir; I am not.

The CHAIRMAN. Unemployed comedian?

Mr. HILGEMEIER. Yes, sir.

The CHAIRMAN. Mr. Hilgemeier, are you familiar with the show commonly called "Dotto"?

Mr. HILGEMEIER. Yes, sir; I am.

The CHAIRMAN. Were you a contestant on the show?

Mr. HILGEMEIER. I was a standby contestant for "Dotto," yes.

The CHAIRMAN. When?

Mr. HILGEMEIER. On May 20, 1958.

The CHAIRMAN. Did you ever appear on the show?

Mr. HILGEMEIER. No, I didn't.

The CHAIRMAN. Were you a standby only one time?

Mr. HILGEMEIER. Yes, sir; I was.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Hilgemeier, are you popularly known as the man who blew the whistle on the TV quiz show business?

Mr. HILGEMEIER. Yes, sir; I am.

Mr. LISHMAN. I am going to hand you a paper and ask you to identify it. This is a copy of an original document.

I ask you to look at it and identify it, please.

(Document handed to witness.)

Mr. HILGEMEIER. Yes, sir.

Mr. LISHMAN. What is this paper that has just been handed to you?

Mr. HILGEMEIER. This is an affidavit that was drawn up by myself and Jack O'Grady of the New York Post and submitted to the FCC in Washington, and also to the New York district attorney's office.

Mr. LISHMAN. At this point, Mr. Chairman, I would like to offer in the record a copy of the affidavit verified July 25, 1958, by the witness, Hilgemeier.

The CHAIRMAN. Do you have the original of this, Mr. Lishman?

Mr. LISHMAN. We have the original, but the witness has testified that this is a correct copy.

The CHAIRMAN. Mr. Hilgemeier, you have just been handed this statement.

Mr. HILGEMEIER. Yes.

The CHAIRMAN. Have you seen this particular statement you have before you?

Mr. HILGEMEIER. Yes, sir; I have.

The CHAIRMAN. You have had occasion to go over it?

Mr. HILGEMEIER. I wrote it, sir, with Jack O'Grady of the New York Post.

The CHAIRMAN. You wrote the original?

Mr. HILGEMEIER. Yes, sir.

The CHAIRMAN. Have you had an opportunity to look over the copy to see if it is a true copy of the original?

Mr. HILGEMEIER. Yes.

The CHAIRMAN. You identify it as a true copy of the original which you signed?

Mr. HILGEMEIER. To the best of my knowledge, yes.

The CHAIRMAN. I want you to look over it to the extent that you wish.

Mr. HILGEMEIER. I don't remember the exact wording of it, sir.

Yes, sir; it is a true copy.

Mr. LISHMAN. In order to make the identification perfectly complete, I am going to hand you the original of the mimeographed exhibit attached to this affidavit and ask you to compare it with that copy and see if it is not exactly the same as this original document.

(Document handed to witness.)

Mr. HILGEMEIER. Yes, sir; it is a true copy. This is the original copy.

Mr. LISHMAN. And the mimeographed copy attached?

Mr. FLYNT. Original copy of what? We cannot hear what is going on up here.

Mr. LISHMAN. Explain what this paper that you are now holding is.

Mr. HILGEMEIER. This piece of paper I am holding is the notebook page which I removed from Miss Winn's notebook in the "Dotto" studio on May 20, 1958. These are the answers to the questions that were given to Miss Winn by Jack Narz; not given, but asked by Jack Narz on the "Dotto" show.

Mr. LISHMAN. Mr. Chairman, with this identification I would like to have a copy of Mr. Hilgemeier's affidavit introduced in the record.

The CHAIRMAN. You intend to question him about the affidavit?

Mr. LISHMAN. Yes.

The CHAIRMAN. Let it be included in the record.

(Affidavit referred to follows:)

STATE OF NEW YORK,
County of New York:

Eddie Hilgemeier, being duly sworn, deposes and says:

1. That on July 11, 1958, in the office of attorney Walter Schier, 608 Fifth Ave., I was paid \$1,500 in lieu of legal action against CBS, Frank Cooper Associates, and/or the Colgate-Palmolive Co., which are, respectively, the network, producers and sponsors of a television quiz show called "Dotto."

2. That my suit would have been based on a charge of fraud and conspiracy in that I learned that a contestant on the show was given the answers to questions which were to be asked on the show. In addition, the same contestant was given the identification of the persons whose caricatures were to be used on the show.

3. That the contestant who had this information could not be defeated, thereby victimizing not only other contestants, but the vast television audience watching the show in the naive belief that they were seeing an honest test of knowledge.

4. That, upon learning the show was a fraud, I refused to appear as scheduled and make myself a party to this deceit and conspiracy, despite many inducements and enticements offered me at first, and threats and abuse later.

5. That on May 20, 1958, I was a standby contestant on "Dotto," which is produced by Frank Cooper Associates, 17 E. 54th St., under the sponsorship of Colgate-Palmolive, and seen over the CBS, Channel 2, network from 11:30 a.m. to noon weekdays. I appeared, as ordered, at 9:30 a.m. this day at a CBS studio at 261 W. 47th St.

6. That I shared a dressing room with three other contestants, two of whom were introduced to me as Yeffe Kimball Slatin and Maria Winn. I do not recall the name of the third contestant, a man.

7. That during the preparations for the show, Art Henley, whom I had met previously while being interviewed as a possible contestant for "Dotto," would take one or two of the contestants out of the dressing room for interviews concerning what we would say on the show, mainly our occupation and anecdotes.

8. That during this period, I was left alone with Miss Winn, whom I observed writing in a notebook. She continued to write in this notebook for a brief period as Miss Kimball and the other contestant returned. Miss Winn told us that she was a student at Columbia University; that she had been "champion" on "Dotto" for two days, and that she had amassed winnings of over \$500, and that she expected and hoped to win a lot more.

9. That about 11:15 a.m., the contestants were taken to the stage for a dress rehearsal; that I observed an undue amount of familiarity between Miss Winn and employees of the studio and associates of the "Dotto" show.

10. That my suspicions became further aroused during the contest between Miss Winn and the first contestant, who was Miss Kimball. It seemed to me Miss Winn had the answers on the tip of her tongue before the question was completed.

11. That I returned to the dressing room alone to search for the notebook in which Miss Winn had been writing; that I found it and it contained the answers which I had just heard Miss Winn giving in her contest with Miss Kimball, and it contained answers which appeared to be for subsequent shows. I ripped out the pages and returned to the wings of the stage just as Miss Kimball was coming off, having lost to Miss Winn.

12. That I informed Miss Kimball: "This is a fixed show."

13. That I showed to Miss Kimball the pages I had torn from Miss Winn's notebook, and that Miss Kimball asked to be shown the notebook. We returned to the dressing room and I showed Miss Kimball the notebook. We left the studio together, not talking to anyone about what we had found, and determined to seek legal advice. Miss Winn was still on stage.

14. That we had photostatic copies made of the notes I had found, that same afternoon of May 20, 1958.

15. That Miss Kimball and I took our story and the notes from Miss Winn's book to an attorney suggested by Miss Kimball, Arthur Seiff, 157 W. 57th St. and that he, in turn, telephoned another attorney, Sidney Hoffman, 280 Broadway.

16. That Mr. Hoffman, by telephone, advised me not to appear on "Dotto," and to come to his office as soon as possible.

17. That at 6 p.m. on May 20, 1958, I was in the offices of "Dotto" at the Hotel Woodstock, 127 W. 43d St., explaining what I had found, and why I would not appear on "Dotto," to Ed Jurist, producer of the show.

17. That Jurist told me that he could not understand how Miss Winn got the answers, and that if I would overlook it he would promise me that I could go on the show a week or two later and be "guaranteed" prize money. Or, he said I could wait for the nighttime version of "Dotto," then scheduled to debut on July 1, when the financial rewards would be greater. I left his office with nothing settled.

18. That Miss Winn, who had tied the second contestant on May 20th, did not appear on the show the following day, with master-of-ceremonies Jack Narz explaining that she was ill and would be back on the show when she recovered. That she has not returned to the show since then, to my knowledge.

19. That on May 22d, 1958, Miss Kimball and I visited Mr. Hoffman and retained him to handle our grievance against "Dotto."

20. That on or about May 31, 1958, Mr. Hoffman told me by telephone that Frank Cooper Associates had made an offer consisting of \$2,000 for Miss Kimball, and \$500 for me, to avoid a legal suit.

20. That I refused the offer, instructing Mr. Hoffman to point out to Frank Cooper Associates that I felt I had been hurt careerwise; that I had been a contestant on six other television shows on which I had earned a good reputation; that I depended upon TV in part for my livelihood as an actor, and that I wouldn't jeopardize all that.

21. That Mr. Hoffman told me that if I didn't settle now that I would be hurt careerwise. The matter was left unsettled.

22. That on or about the 18th of June 1958, I went to Mr. Hoffman's office. He told me that he settled the case in behalf of Miss Kimball for \$4,000. He showed me a letter which said "enclosed please find" and then something about a \$4,000

check payable to Mr. Hoffman and Miss Kimball. Mr. Hoffman told me that Miss Kimball received over \$2,600 of the settlement. His fee was one-third of the settlement. Mr. Hoffman said I could settle for \$1,000. I refused.

23. That on July 11, 1958, I telephoned Frank Cooper Associates and spoke to a "Mr. Fisher," being referred to him by Mr. Jurist. Mr. Fisher asked me to come to see him immediately. He told me: "We'll give you \$1,500 and that's it."

He accused me of blackmail, extortion, and threatened to call the police and newspapers.

24. That I agreed to accept \$1,500 and that Mr. Fisher directed me to go to Mr. Schier's office.

25. That I was accompanied to Mr. Schier's office by Jack O'Grady of the New York Post.

26. That Mr. Schier refused to permit Mr. O'Grady to attend the meeting, during which I signed three papers which I believe to be (1) a general release, (2) a notice that I was acting without attorney, and, (3) a statement that I was being paid in lieu of becoming a contestant on "Dotto." That Mr. Schier refused to give me copies of the signed papers.

27. That Mr. Schier gave me \$1,500 in 15 \$100 bills, serial numbers KO1634349A, BO5421306A, BO6642979A, BO6691315A through BO6691326A.

28. That a photostatic copy of the notes I tore from Miss Winn's notebook, while she was on the air giving the answers contained on the page, is attached hereto as a part of this affidavit.

(S) EDDIE HILGEMEIER.

Sworn to before me this 25th day of July 1958.

(S) ARTHUR J. MCGUIRE, *Notary Public*.

(Notary stamp affixed.)

(In handwriting as follows:)

Bing Crosby—

Barry Fitzgerald—Abbie Players.

Donald Duck—3 Nephews

Dagwood—Mr. Dithers.

Short Stories—Hemingway—

Zhukhov—

Alexanders Ragtime Band.

Band Played On.

MacNamaras Band.

Johnsons Polar Garden.

Sewards Folly.

May 20, 1958.

(S) EH 7/25/58.

Mr. LISHMAN. Now, Mr. Hilgemeier, how did you come to be a standby contestant on May 20, 1958, of the show "Dotto"?

Mr. HILGEMEIER. I don't remember the correct date, whether it was May 18 or 19, I appeared in the "Dotto" studio. That is studio 62 on West 47th Street in Manhattan, just to see the show itself. I filled out an application in the audience and after the show was over I was called by Mr. Art Henley, who discussed—

Mr. LISHMAN. Who is Mr. Art Henley?

Mr. HILGEMEIER. He was an official of the Frank Cooper office or the "Dotto" office. I am not sure.

Mr. LISHMAN. Frank Cooper Associates were the producers of this show?

Mr. HILGEMEIER. Yes, sir; they were.

Mr. Henley spoke to me in regard to becoming a contestant on the "Dotto" show and asked if I would not stop by his office that afternoon about 2 o'clock. So I went to the "Dotto" office in the Woodstock Hotel on West 44th Street in Manhattan, at which time I took a test, a series of tests, for becoming a contestant on "Ditto."

I took the test and afterward I was told that he would like for me to appear in the "Dotto" studio on May 20, West 47th Street, which I did.

Mr. LISHMAN. You appeared there to be a contestant on the show, is that correct?

Mr. HILGEMEIER. Yes. I told Mr. Henley that I had appeared on six other television quiz shows.

The CHAIRMAN. You told who?

Mr. HILGEMEIER. I told Mr. Henley that I appeared on six other quiz shows since September 1957, and he became very interested in it. And he asked me if I would come on the show.

Mr. LISHMAN. What happened in the dressing room when you were there as a standby contestant on "Dotto"?

Mr. HILGEMEIER. I got to the dressing room and there were two other people there at the time, Miss Kimball, Miss Maria Winn, and a third party who I didn't know the name.

Mr. LISHMAN. Were the two persons named by you actually contestants on the "Dotto" show?

Mr. HILGEMEIER. Yes, sir; they were.

I sat down and began talking with the other contestants to be on the "Dotto" show. At this time Miss Winn was writing something in a notebook, paying particular attention that other people in the dressing room would not see what she was writing.

At a later time another gentleman came in who was identified to me as one of the challenging contestants on the show.

Mr. LISHMAN. What happened then?

Mr. HILGEMEIER. I don't remember the gentleman's name. I think it was Mr. Henley or it was Mr. Green, who would come into the dressing room.

Mr. LISHMAN. Would you identify Mr. Green? Was he connected with the show?

Mr. HILGEMEIER. He was connected with the "Dotto" show itself.

Mr. LISHMAN. The producers of the "Dotto" show?

Mr. HILGEMEIER. Yes. He would come in and take each of us individuals to another dressing room whereby he would go over the anecdotes of the show, such as personality, what is our background, what we have done. Then he would ask a series of questions, trying to pin down our general knowledge whereby they could ask questions pertaining to it.

Mr. LISHMAN. After you had seen the contestant, Miss Winn, write in her notebook, what did you do?

Mr. HILGEMEIER. I didn't pay that much attention to it at the time. When we went down to the stage area for the show itself and had a runthrough rehearsal, I noticed Miss Winn had a great deal of familiarity with the other people in the studio.

A young lady appeared on the set before the show and escorted Miss Winn back into the back part of the stage area. The show started and Miss Winn was defeating Miss Kimball.

Why I went back to the dressing room to find this notebook, I can't tell you. I just went back. The notebook was on the dressing table and I opened it to the last page in the notebook and I found the answers that Miss Winn just defeated Miss Kimball by. Those are the answers you have.

Mr. LISHMAN. You tore the page out of the notebook?

Mr. HILGEMEIER. I removed the page from the notebook.

Mr. LISHMAN. What did you do then?

Mr. HILGEMEIER. I went back to the stage area itself and confronted Miss Kimball and told her that Miss Winn had the answers and questions.

Mr. LISHMAN. What did Miss Kimball say to you?

Mr. HILGEMEIER. She became very upset at the time. We went back to the dressing room to pick up her belongings and left the studio itself.

Mr. LISHMAN. You did?

Mr. HILGEMEIER. I left the studio with Miss Kimball.

Mr. LISHMAN. Did you take the piece of paper that you tore from the notebook with you?

Mr. HILGEMEIER. Yes.

Mr. LISHMAN. Is a true and correct copy of that piece of paper attached to this affidavit which is in evidence?

Mr. HILGEMEIER. Yes; it is.

Mr. LISHMAN. Will you please read what is contained on this torn page of Miss Winn's notebook?

Mr. HILGEMEIER. In answer to the pictures: Bing Crosby; Barry Fitzgerald, Abbie Players is the clue; picture Donald Duck, and the clue is the three nephews; picture Dagwood, the clue Mr. Dithers.

Short stories by Hemingway, Zhukhov, Alexander's Ragtime Band, Band Played On, MacNamara's Band, Johnson's Polar Garden, Seward's Folly.

Mr. LISHMAN. Mr. Chairman, at this time I would like to ask for a kinescopic showing of the "Dotto" show on the morning of May 20, 1958, which immediately followed this notebook incident which has been described.

(Showing of kinescopic production.)

(Transcript of the sound track follows.)

RALPH PAUL. In just a few moments, the first phone call. Stand by. You may be phoned. You'll be asked if you can identify this face. If you can, you will win a fabulous prize. All you have to do is watch—watch these dots. "Dotto." "Dotto," the exciting new quiz game, brought to you by Colgate Dental Cream. Fight tooth decay with Colgate's while you stop bad breath all day. And here's your host for "Dotto," Jack Narz. [Fanfare.]

NARZ. Hi, everybody. Thank you very much. Tonight, on behalf of Colgate, may I welcome all of you to "Dotto." New York is all aflutter this morning; we have two very famous people visiting us. President Eisenhower is here, and Van Cliburn, the young Texan pianist who scored such a big hit over in Moscow, is also in town and repeated his triumph last night here in New York. And with two famous people in town, we are having a big parade this afternoon, and it's gonna be one of those great-big ticker-tape parades, you know. He just can't seem to shake pianoplayers, this guy, does he? This is the show, you know, that used to be on the air every day, Monday through Friday, here on CBS. And what we do is, we have a series of dots back here which, when they are connected, form a picture, and those pictures turn into dollars for our studio contestants. Now, today we'll be making our first phone call to you at home to see if you can identify our home "Dotto" picture and maybe win that cavalcade of three fine cars. We will find out in just a few moments, but right now let's meet our first two guests. Ralph, please?

PAUL. Well, Jack, getting us off on a solid note—returning for the second day, Colgate Dental Cream welcomes back our new champion from New York, Miss Marie Winn, and her challenger from Mountain Park, Okla., Mrs. Yeffe Kimball. [Applause.]

NARZ. Now, first of all, let's talk to our new champ, who yesterday won \$440. I guess that makes you feel pretty good, doesn't it, Marie?

WINN. Oh, I guess it does.

NARZ. Well, good enough. What are you going to do with all that loot? Spend it all in one place or are you going to keep it?

WINN. Well, I haven't decided, but——

NARZ. How did you spend your evening—tossing?

WINN. Oh, I really had a swell time, Jack. I spent some little time with Latin, then with symbolic logic, then with music——

NARZ. Marie, you know, I hate to say this, but I don't think we're gonna have any questions concerning those subjects on "Dotto" this morning. Maybe you were studying the wrong thing. We'll find out in a moment. Let's talk to your challenger now. Yeffe Kimball, from Mount Park, Okla.——

KIMBALL. Mountain Park.

NARZ. Mountain Park. I'm sorry; Mountain Park, Okla. You're part Osage Indian?

KIMBALL. Right.

NARZ. Uh, hugh. And your husband is an atomic scientist. You are a specialist on Indian work. May I ask you, first of all, what the name Yeffe—and that's spelled Y-e-f-f-e—what does that mean?

KIMBALL. Wandering Star.

NARZ. Wandering Star? You mean like Sonny Tufts, or somebody like that? No? [Laughter.] Do you understand Indian—the dress, too, may I ask, is this authentic?

KIMBALL. Well, this is the Sisuki Indian dress that the Rio Grande Valley Indians copied from the Spaniards' shirts when they came out there in the early 16th century.

NARZ. Were these worn in those days?

KIMBALL. The men wore these shirts, and then the women copied them for themselves.

NARZ. Would you step out front here where we could get a shot of it and have everybody take a look at the dress. Isn't that beautiful? It's very colorful, Yeffe, real nice. [Applause.] How about Indian sign language? Do the Osage use sign language?

KIMBALL. The Indians all use sign language.

NARZ. Do you understand it? Can you use it?

KIMBALL. Yes. Let's say I had to ride a horse all the way here to get to this program——

NARZ. In New York City, boy, yeah. Yep——

KIMBALL. I would start out early in the morning and I would get on my horse and I would ride all day until sundown at night, then I would lie down and go to sleep, then I would get up on my horse and I would ride all night long and come back to sunrise and I would be here.

NARZ. And that would just about cover going across town here in New York. Believe me, that's about as fast as you can make it in a cab. Well, Yeffe and Marie, we'll start our first match in just a moment. Right now, a word to you folks. Do you know who was the first to put toothpaste in a tube? Colgate, that's right. And now, who was the first with an aerosol toothpaste? Colgate! Watch.

ANNOUNCER. You can't learn too early that one brushing with Colgate Dental Cream helps give the surest protection all day long. You fight tooth decay with Colgate while you stop bad breath all day. Brushing for brushing, Colgates gives the surest protection ever offered by any toothpaste. Of all leading brands, only Colgate contains Gardol. And here's how Gardol works. Now, just as I was protected by this invisible shield, Colgate with Gardol forms an invisible protective shield around your teeth. Fights tooth decay and bad breath all day. Yes, for most people just one brushing stops mouth odor all day. Get Colgate Dental Cream. And have you tried America's first aerosol dentifrice? Colgates with Gardol in the most convenient container ever. Just press the top and release the desired amount. Real fingertip ease. And whether at the push of a button or squeeze of a tube, remember to fight tooth decay with Colgate, while you stop bad breath all day. (Last portion sung.)

NARZ. And Yeffe and Marie, for each of you we have some Colgate Dental Cream with Gardol and Power-Packed Colgate. OK, all set now to go with our first match. Good luck, ladies, and would you take your positions back at the Dotto boards, please? And now let's reveal the Dotto pictures, today

worth \$1,000. Now as you know, you have identical pictures. However, you cannot see each other's. And remember the sooner you identify the picture the more money you'll make. We'll pay you \$20 for each dot that remains unconnected. Yeffe, would you try your Dotto button, please? (Buzzer) OK, and Marie? (Buzzer) OK, fine, they both work and we're ready to go. Yeffe our first category, documents of history. Now you have your choice of 5, 8 or 10 dots. Now think carefully because if you miss the questions the dots you ask for will be connected in your opponent's picture. Documents of history—

KIMBALL. Well, I'd better play it safe and take 5.

NARZ. Five. Was the great religious reformer who tacked his 95 theses to the church door Martin Luther or John Wesley?

KIMBALL. Martin Luther.

NARZ. That is right. Yes, ma'am, and here are your 5 connected dots, Yeffe. OK, 5 dots connected, 45 unconnected. Your picture is worth \$900, Yeffe. Marie, documents of history is our category. Five, eight or ten for you?

WINN. Well, you know I did take a history course. I think I'll try 10.

NARZ. Ten. Name the man who wrote the famous "Fourteen Points."

WINN. Woodrow Wilson.

NARZ. That is right, yes, ma'am, here are your 10 connected dots. All right, 10 dots are connected in your picture, 40 unconnected. It's worth \$800. And all of our questions are verified by the editorial board of the Encyclopedia Americana. I see Yeffe squinting, working real hard over there. You recognize it yet? We'll go on with—

KIMBALL. Not yet.

NARZ. American short stories is our next category, Yeffe. American short stories—5, 8 or 10?

KIMBALL. Well, I'll try 10.

NARZ. Ten. Here we go. Surgeon, soldier, sailor, spy, dreamed Thurber's great creation. Though Walter's life was mighty dry, he had imagination. Name that story.

KIMBALL. Will you repeat that, please?

NARZ. (Repeats) Can you name that story—(bell rings). Oh, you don't know? It's one of my favorites. "The Secret Life of Walter Mitty." Yeffe, I'm sorry you didn't answer that question, and because you fell through, the 10 dots you asked for will now be connected in Marie's picture. Marie, 10 dots for you. (Music—dots being connected.) OK, now you have 20 dots connected in your picture, Marie. You can go for your first clue on this question. The category, American short stories.

WINN. I think maybe I know it.

NARZ. Well, you can do whatever you want to. You can press your button for dotto, we'll give you a chance to make the identification, or you can go one more question to go for the first clue, whatever you want to do.

WINN. All right, I'll go for one more question. I'll take the five.

NARZ. OK, to give you the clue. All right. A horror story of greed and hate as—Poe did spin it; a cellar of wine was the bait, the man was walled within it. Was that story "The Cask of Amontillado" or "The Telltale Heart?"

WINN. "The Cask of Amontillado."

NARZ. You are right. Here are your five connected dots. Here's your clue. (Music—dots being connected.) All right, there are 25 connected dots in your picture. \$500 is riding on your answer. Marie, you understand that if you are mistaken you'll be eliminated from the game? OK. All right, Yeffe will not be able to see your answer. Just step right over there and write it out, please. [Music.] You are absolutely right, Marie. Now please stand by. Yeffe, she has identified her picture, and oh boy, let's see how you do. Now. You have only five dots connected in your picture. However, we will give you another 10 seconds to study that picture. I know you have been squinting at it real hard. Let's see if you can put those dots together and come up with the right answer and tie up our game. Good luck, Yeffe. [Music.]

KIMBALL. Gee, I don't think I can, but I'll take a guess.

NARZ. All right, you're entitled to a guess.

KIMBALL. It looks like Winston Churchill.

NARZ. No, I'm sorry. That means that Marie Winn remains our dotto champion. She correctly identified Barry Fitzgerald. [Applause.] Of course the first clue was Abbey player—that arm chair would have helped you a lot. Thanks so much, Yeffe, for playing dotto for us. The makers of Colgate have for you a check for \$25, Yeffe. Thanks again. Good luck. Marie you have won another \$500, you now have a total of \$940. You are still our champion and in

a very short time we'll have a brand new challenger for you, so please stand by. And in just a moment we will connect 10 more dots to our home dotto picture and make our first phone call. But right now, here's the story about the greatest washday development of our time. I know you ladies want to wash your family clothes in the very best detergent there is, and do you know the men who make those clothes recommend this new Fab with Duratex, because new Fab washes clothes cleaner, whiter, brighter, and more lastingly odor-free than any other washday product in the world. That's right: the makers of almost 1 billion fabric products a year have tested and approved new Fab. Now for instance, from the makers of Pacific contour sheets comes this report on new Fab from research director C. B. Morris:

MORRIS. Our scientists rated Fab A-1 on every test, but when it came to over protection we checked their findings with this panel of housewives, the ladies who actually use our sheets in their own homes. Different wear-long Washday products were used to launder them for 3 weeks. It was unanimous. Fab-washed sheets scored highest right across the board. Our technicians and our panel voted for Fab. As a result, Fab gets our wholehearted recommendation. It's tops. That's why every Pacific contour sheet has this advice printed more manufacturers who recommend new Fab with Duratex.

NARZ. Thank you, Mr. Morris. And your favorite store has new Fab with Duratex now. Yes, any Fab you buy now contains miracle Duratex. So get a box for your family's wash today. New Fab with Duratex. Incidentally, the folks who make Fortuna foundation garments and Weldon pajamas are two more manufacturers who recommend new Fab with Duratex.

And now I recommend we all take a look at the home dotto picture as Mr. Ralph Paul connects 10 more dots.

PAUL. Thank you, Jack. That phone call in a moment, but first the 10 dots. Each day 10 dots are connected in our home dotto picture. Now the first person that we call at home who can identify this face will receive a fabulous prize. And now here are the 10 dots for today. (Music—dots being connected.)

NARZ. OK, there are the 10 dots for today. Now it's time for our first phone call, and Ralph, whose card was drawn today?

PAUL. Well, Jack, we received cards from all over these United States, and today our call goes all the way to New York, to Brooklyn—

NARZ. Yea-a-a, Brooklyn.

PAUL. Where "Dotto" is seen over WCBS-TV, and Jack, you'll be talking to Mrs. Georgia B. Phillips.

NARZ. Thank you very much, Ralph. Hello there, Mrs. Phillips.

Mrs. PHILLIPS. Hello, Mr. Narz.

NARZ. Can you hear me all right?

Mrs. PHILLIPS. Yes, I can. I'm looking right at you.

NARZ. Well, good, and good luck to you, Mrs. Phillips. And in just a moment I'll be asking you the big question—asking you to identify this home dotto picture. And if you can, listen to what we will send to you:

ANNOUNCER. First, for the woman of the family, a magnificent 1958 Edsel Bermuda. (Fanfare.) The newest idea in station wagons, the Bermuda has room to spare for every family need. Almost 9 feet of load space, with tail gate down. It has Edsel's famous teletouch drive, that puts the shift button in the middle of the steering wheel where they belong. And you'll have Edsel's big safe self-adjusting brakes that adjust themselves automatically in the course of day-to-day driving. And your new Edsel Bermuda is packed with a power that station wagons need. A big 303-horsepower engine—then, for the man of the family, a luxurious 1958 Edsel Citation convertible. It has all the same outstanding features on the mighty 345-horsepower engine, matched interior fibers, and new comfort-shaped seats. A car for him, a car for her—the car of a lifetime—then for the youngster of the family, from Idaho Department Store, Boise, a real electric model sports car that drives up to 5 miles per hour—yes, another fabulous home "Dotto" prize—a cavalcade of cars from Colgate Palmolive. (Fanfare.) OK, Mrs. Phillips, this wonderful prize is yours if you can answer this question, and here it comes, Mrs. George B. Phillips in Brooklyn, N.Y., can you tell me who this is.

Mrs. PHILLIPS. Ah, you know, I missed two of the clues.

NARZ. Yes, I do—but I'm not—I beg your pardon?

Mrs. PHILLIPS. I missed two of the clues, and if you had called me last week I would have won that beautiful kitchen.

NARZ. Yeah, but this is this week, Mrs. Phillips, and there's another picture. Do you have any idea who it is?

Mrs. PHILLIPS. I'm going to take the wildest stab in the world. I don't know. Was he a writer?

NARZ. I beg your pardon?

Mrs. PHILLIPS. Was he a writer?

NARZ. I'm sorry, I can't answer that. I can't tell you anything.

Mrs. PHILLIPS. Well, I'm gonna take a wild guess and say Shakespeare.

NARZ. Well, I'm gonna make a wild answer and say "No", Mrs. Phillips, it is not Shakespeare. Sorry. However, because your card was drawn, Mrs. Phillips, we're going to send along to you a full year's supply of all the Colgate products seen here on "Dotto." OK?

Mrs. PHILLIPS. All right.

NARZ. Thanks very much for entering our contest. Bye, bye.

Mrs. PHILLIPS. Call me again sometime.

NARZ. Well, let's hope so.

Mrs. PHILLIPS. When I have the answer.

NARZ. OK, when you know the answer. All right, you let us know when you know the answer. OK, Mrs. Phillips, thank you and goodbye. Bye, bye.

Well, that means tomorrow we'll make another telephone call and later today another word clue to help you identify this picture. Now, Mrs. Phillips proved how important the clues are, so write 'em down, won't you? And if you'd like to enter the home dotto game, here's all you have to do.

ANNOUNCER. Just send us a post card. You may send as many post cards as you like. Write your name, address, and phone number on the back and send to "Dotto", Box 503, New York 46, N.Y. And stand by for today's word clue. We'll have it for you just a little later. Incidentally, Peter Lawford, Phyllis Kirk, and Asta have an exciting adventure in store for you this Friday on "The Thin Man". Be sure and watch, won't you? And now we continue with "Dotto", brought to you by Florient Air Deodorant—kills bad room odors fast.

BESS MYERSON. Hi, I'm Bess Myerson. And I want to show you what to me is the fastest, surest, easiest way to cure bad household odors. It's wonderful Colgate Florient, the new instant actionaire deodorant that quickly kills strongest cooking odors, like fish and cauliflower, or the smell of stale tobacco smoke. With Florient here's all you do—just one quick spray kills bad odors fast, makes air smell flower fresh. Florient is grand for every room in the house—kitchen, living room, sick room, even baby's room. And be sure to keep an extra Florient in your medicine cabinet. And now Florient comes in four fragrances—the popular floral, new tangy spice, refreshing mint, and zesty pine. No other air deodorant—only Florient—gives you this choice. Get two or more—you'll love all four. No wick, no wait, no waste.

NARZ. Thank you, Bess. Marie, ready to go onward and upward?

WINN. Sure thing, Jack.

NARZ. Let's try, shall we? Ralph, would you introduce our next player, please.

PAUL. Jack Narz, Florient Air Deodorant welcomes Mr. Michael Hayden of Old Greenwich, Conn.

NARZ. Hi, Mike. [Applause.] Now let's see, Mike, we'll find out about you. You're a single fellow, huh?

MIKE. Yes, sir, and hope to remain so.

NARZ. Oh well, that kills the next remark I was going to make. And you have two ambitions—to live long and make lots of money. That right?

MIKE. Yes, sir.

NARZ. Well, we'll find out in just a few minutes if you can make lots of money. You're a pilot by trade, is that true?

MIKE. Right—with Pan American.

NARZ. With Pan Am—where do you fly, between here and where?

MIKE. Well, we go as far as Teheran, the pilots in the Atlantic division. There's three divisions of Pan American.

NARZ. Well, let's see how you do on this division of CBS, which is studio 62 on 47th Street. May I present each of you with some Florient Air Deodorant, which comes in four fragrances, spice, mint, pine and floral. There you are—and good luck to both of you. And now would you step back, please, to the dotto boards and we'll get along.

And let's reveal the new dotto picture, worth \$1,000. These are identical pictures, however you cannot see each other's. And Mike, the sooner you identify the picture the more money you will make. Want to try the dotto button there on the desk in front of you? [Buzzer.] OK, fine. Now the first category, songs about bands. Now you have a choice of a 5- or 8- or 10-dot

question. If you fail to answer, the dots you ask for will be connected in your opponent's picture. Did you want to ask a question, Mike?

MIKE. Yeah, there's nothing up there yet.

NARZ. That's right. That's why we ask you the questions, and then if you answer the questions correctly then we'll put something up there. But if you don't answer the questions we're going to put nothing up there. And Mike, our first category is songs about bands.

MIKE. I'll take 8 points.

NARZ. Eight. In this band song there's a flute player named Hennessey Kinnessey, and the music is something grand. Can you name that band?

MIKE. That's McNamara's band.

NARZ. That's right. Now we'll put something up there, eight connected dots. [Applause-music-dots being connected.] Very confusing, uh? Eight dots are connected, 42 are unconnected. Mike, the picture is worth \$840. Marie, the category, "Songs about Bands."

WINN. Mike took eight, didn't he?

NARZ. He did.

WINN. Well, I'm gonna try 10.

NARZ. All rightee. According to this song, this is the bestest band what am, honey lamb. Name that band.

WINN. "Alexander's Ragtime Band."

NARZ. Sure it is. And here are 10 connected dots for you, Marie. OK, 10 dots connected in your picture, 40 unconnected, it's worth \$800. And Mike, our next category, "Russia, Now and Yesterday"; 5, 8 or 10?

MIKE. Ten points.

NARZ. Name the Russia cultist murdered in 1916, who was known as the Mad Monk.

MIKE. Rasputin.

NARZ. That's right. And here's 10 more dots for you. [Music-dots being connected.] I'm as confused as you are, believe me. OK, I think you have 18 dots connected, 32 unconnected. The picture is worth \$640. Marie, Russia, now and yesterday.

(Buzzer, by Mike.)

NARZ. You think you know who it is, Mike?

MIKE. I'll give it a try.

NARZ. Well, I'll tell you what. We're gonna give you a good fair chance at it and also you, Marie. We're gonna give you another 60 seconds to study that picture and study it hard. I'm as confused as anybody here in the studio right now. In the meantime, we'll be back to get your answer in just a moment, Mike. Right now, I think it looks like my old Buddy, Ralph Paul, has a little something going for him over there on his "Dotto" board. It looks like maybe it's a kind of a problem. What's going on over there, Ralph?

PAUL. Well, Jack, it is a problem—the problem of dishwashing and what it can do to your pretty hands. Now no wonder that this young lady looks like this when she sees her rough, red hands. Ah, but you change to new velvety Vel. What a difference. You see, Vel is specially made for dishwashing. Now, unlike laundry detergents, Vel contains no irritating alkali or harsh chemicals. You get sparkling dishes, glasses, pots and pans, but no detergent burn to hands. You can prove it to yourself. You just wet your hands and you pour laundry detergent in one palm and new Vel in the other. Now you can feel the heat generated by the laundry detergent but you feel no heat with Vel. So, for sparkling dishes, glasses, pots and pans but no detergent burn to hands, change to Vel today. And change from that unhappy picture to this. Yes, you'll bless new velvety Vel!

NARZ. Ah, thank you, Sparkle. And boy, this is one time when both contestants really used that 60 seconds you gave them, Ralph. They've both been peering and squinting and taking all different views on this thing. OK, Mike, you have 32 unconnected dots in your picture and that means that \$640 is riding on this answer. Now if you are mistaken we will have to eliminate you from the game. OK, Marie will not be able to see your answer if you will step right over there to the Dottograph and write it out, please. [Music.] And his is right. Yes, that's who it is. [Applause.] I'm as much in the dark as anybody—had to get this—wait a minute, I beg your pardon. Then what do we do now? We'll make a ruling about it? He's right actually in the identification. He didn't put all—he has a partial answer down—you'll make a ruling later? In the meantime we'll go over to Marie. All right, Marie, he has identified his picture. He's on the right track. He has made almost a complete identification.

We'll have to make a ruling on his answer a little later. But in the meantime we're gonna give you an opportunity to stay in our game by coming up with your identification if you can. Now you have had 60 seconds to look at them. You want another 10 to study it?

WINN. Yes.

NARZ. All righty. Good luck then, Marie. [Music.]

WINN. It looks to me by that thing down there, something like a duck. So is it Donald Duck? or little ducks?

NARZ. Well, I can accept one answer from you, Marie. Could you give me just one?

WINN. Donald Duck's little nephews?

NARZ. Well, you are right. Now that is right—it is Donald Duck's nephews. And I think we have—well I know we have a tie game now, so that solves our problem. Actually I think Mike chose the hard way to write his answer. If he had written Donald Duck's nephews we would have accepted that answer, but you wanted to give us the names. And I believe it's Huey, Dewey, and Louie. Is that right, Louie's the third one? OK, but in the meantime I think he was right in identifying the nephews, and I know Marie was, so we have a tie game. We'll have them both back here tomorrow. OK, we'll play "Double Dotto" then. Thanks, Mike, thanks, Marie, we'll see you tomorrow. Tomorrow they'll be playing for \$40 for each unconnected dot and the next picture you folks see will be worth \$2,000. Right now we want you folks at home to see our word clue on the Home Dotto picture, so here it is, and write it down. [Music.] Friend of royalty. Get your cards in as soon as possible. Our address for the Home Dotto game, Dotto, Box 503, New York 46, N.Y. That's about it for today. Tomorrow we'll add 10 more dots in the Home Dotto picture and make another phone call. We'll see you then. Goodbye, everybody. See you tomorrow.

ANNOUNCER. New, new, new! New stain-removing Ajax, wipes off stains faster than any other type of cleanser. If you haven't tried Ajax in the last 30 days you just don't know how good a cleanser can be.

VOICE. I know. Last week I tried it on the dirtiest sink. New stain-removing Ajax is self-starting. Starts to work, starts to clean even before you start to rub. The moment you shake it on, new Ajax starts to work.

ANNOUNCER. The new Ajax high-speed cleaning formula is your answer. As this diagram shows, new Ajax gets right down to the surface, cuts the grease, bleaches the porcelain, wipes off stains faster than any other type of cleaner. If you haven't tried Ajax in the last 30 days you just don't know how good a cleanser can be. So, don't wait—prove it for yourself—get new self-starting Ajax today.

See the drama of a man who thought that his family loved him only for what he could provide, on "The Millionaire" tomorrow night. We'll see you tomorrow on "Dotto."

MR. LISHMAN. Mr. Hilgemeier, you have just seen the showing of the "Dotto" program on May 20, 1958. It was on that day that you tore the page from Miss Marie Winn's notebook, is that correct?

MR. HILGEMEIER. Yes, sir; it is.

MR. LISHMAN. And you tore that page from her notebook prior to the commencement of this show?

MR. HILGEMEIER. That was during the show itself, while she was on camera.

MR. LISHMAN. While she was on camera you went into her dressing room?

MR. HILGEMEIER. It was in the dressing room where we were all in. I didn't go to her dressing room. We were all in the same one.

MR. LISHMAN. You tore this from her notebook?

MR. HILGEMEIER. Yes, sir.

MR. LISHMAN. Is it a fact that all the answers she gave there are contained in this list that you took from her notebook?

MR. HILGEMEIER. Yes, sir; they are.

MR. LISHMAN. Will you read the answers from the original document that you tore at that time?

MR. HILGEMEIER. Do you want to read the whole page or the ones she gave?

Mr. LISHMAN. The answers she gave.

Mr. HILGEMEIER. Barry Fitzgerald, and the clue was Abbey Players. Picture, Donald Duck. The clue three nephews. The questions asked, "Alexander's Ragtime Band," "Band Played on," and "McNamara's Band." They are all listed here.

Mr. LISHMAN. What did you do with this torn page from Miss Winn's notebook after the show?

Mr. HILGEMEIER. After the show was over, sir, as I have stated, Miss Kimball and I left the studio, and had photostatic copies of this notebook page made.

Mr. LISHMAN. Please identify Miss Kimball. Was she the Indian princess on this performance?

Mr. HILGEMEIER. Yes, Yeffe Kimball, and I left the studio itself and had photostatic copies of this notebook page made in Manhattan. At that time we went—

Mr. LISHMAN. Did you have a discussion with Miss Kimball to the effect that the show was fixed?

Mr. HILGEMEIER. Yes, I did, sir. She at that time told me if any litigation were to arise out of the situation that she would be willing to give me 50 percent of whatever moneys she got.

Mr. LISHMAN. Will you continue, then?

Mr. HILGEMEIER. She felt that she might have some kind of suit against them. She said she wanted to sue them. She called her attorney, a Mr. Arthur Seiff.

Mr. LISHMAN. In New York?

Mr. HILGEMEIER. In New York City, West 57th Street. He was not in the office, but we went to the office anyway. This was about 2 o'clock in the afternoon. Mr. Seiff was not due until about 4. So we left the photostatic copy of the notebook page and a message to Mr. Seiff, and we left his office. She took me at that time to have a drink. I guess she needed it, or I did. She told me that she needed this and she needed me, so we went back to Mr. Seiff's office at 4 o'clock. He was not there. We waited until 5 and he finally came in at 5. Mr. Seiff told us that he didn't have time for this kind of a situation and referred us to a gentleman by the name of Sidney Hoffman, whose offices are also in Manhattan, and who is an attorney. He told Miss Kimball on the telephone that he would like to see us, also myself. So after the discussion with Mr. Hoffman whereby he had told us that possible litigation could come out of this, we left Mr. Seiff's office, and I went to the producer's office in the Woodstock Hotel on West 44th Street. This was about 6 o'clock.

Mr. LISHMAN. Who were the producers?

Mr. HILGEMEIER. The producers of the show are the Frank Cooper Associates. They package the show. But Mr. Ed Jurist is the producer of the "Dotto" show itself. We went to the "Dotto" offices. He wasn't there so we waited to see him. In the meantime we spoke with a Mr. Green, I believe his name was. He was appalled by it all and had no comment to make. The thing he wanted to see was the original copy of this page that I had taken from this notebook. He wanted that very badly. We did show him the photostatic copy of it, however. But he wanted to see the original.

Mr. Jurist finally came in about 6:15. The first thing that he did was to separate Miss Kimball and me. He took Miss Kimball to his office while I waited outside and had a conversation with her. After

Miss Kimball came out, I went into the office and had a discussion with him, and he told me that he was amazed at this thing and asked me what would I like to have.

Mr. LISHMAN. He asked you what you would like to have?

Mr. HILGEMEIER. Yes, sir.

Mr. LISHMAN. Continue.

Mr. HILGEMEIER. He told me that he didn't want me to go on the "Dotto" show. At that time I was not interested in going on it at all. He asked me—he told me, rather, that I was not psychologically in a frame of mind to go on the show at that time, and if I would like to wait a week, I could go on later on with a guarantee.

Mr. LISHMAN. Did he mention what the guarantee was?

Mr. HILGEMEIER. No, he didn't. He didn't mention the guarantee. Any moneys or anything. He did mention that there would be a rather substantial guarantee. Or on the other hand, if I would like to wait until the night time version of "Dotto," which was being aired on July 1st on NBC, that the rewards would even be greater, and even a more substantial arrangement could be made with me. Again I told him I was not interested in anything that they could offer me. He also at a later time offered me moneys and a job with the network. He said I could have this job with the network providing that I would sign a release that I would not sue the "Dotto" producers for this thing.

Anyway, we left the offices, and 2 days later, on May 22, we had an appointment with Mr. Hoffman in his offices, and he told me—we discussed the situation with him—at that time I left the original page of this notebook with Mr. Hoffman. He told me that he would be in touch with us. He required that we sign a certain legal document that any litigation that would come of this, that he would receive a third of any moneys. So in the meantime, this was in May, I did not see Mr. Hoffman until sometime in June, the latter part of June.

At such time I had learned that Miss Kimball had settled the case. Mr. Hoffman told me that only through his offices could this case be settled. During the month of June I spoke with him. He said that he would offer me \$500 for a release and I told him that I was not interested in it. I told him he could give me 6 cents as far as I was concerned. At a later time he offered me \$750, and it finally went to a thousand. I still told him I was not interested in the money or anything he would do. Finally Miss Kimball, I learned, settled the case in the amount of \$4,000, and the notebook page was returned to the producers, and I went down there when I learned this to get the notebook page back, since I felt it was my property. He told me I could not have it, that it had been turned over to the producers. I am sort of telling the story.

Mr. LISHMAN. Yes; tell the story.

Mr. HILGEMEIER. As I best remember it. In August—during this time I was having a great deal of trouble getting work. I was slated for two more quiz shows, "Treasure Hunt" and another show, "Bid and Buy."

Mr. LISHMAN. Do I understand that you were paid \$1,500?

Mr. HILGEMEIER. I was given \$1,500, not until August.

Mr. LISHMAN. Who gave that to you?

Mr. HILGEMEIER. The attorney for Frank Cooper Associates. His name is Walter Schier.

Mr. LISHMAN. Who told you you would get this \$1,500?

Mr. HILGEMEIER. Sy Fisher, who is the producer for Frank Cooper Associates.

Mr. LISHMAN. He is a producer for Frank Cooper Associates?

Mr. HILGEMEIER. He is an associate of Frank Cooper Associates.

Mr. LISHMAN. Did he tell you that you would get \$1,500 and that is all you would ever get?

Mr. HILGEMEIER. Yes; he did.

Mr. LISHMAN. Why did you accept the \$1,500?

Mr. HILGEMEIER. The morning that I went to Mr. Fisher's office, I told Mr. Jurist the day before I was going to the newspapers with the story. He told me not to do anything until I spoke with Mr. Fisher the following morning. This was about the 17th of August. I went to the office and he offered me this money. I turned it down and I left the office. As I was leaving he picked up the telephone and said he was going to call the police on me and accuse me of extortion and being a blackmailer. As I was walking out the door he said, "Go home and cool off and call me back." I left the office and called Jack O'Grady from the New York Post with whom I had spoken the day before and told Jack what had happened, and he suggested for proof of this thing actually happening I should accept the \$1,500 and sign the release and make it part of the affidavit which I have here.

Mr. LISHMAN. And you did that?

Mr. HILGEMEIER. I met Jack O'Grady that afternoon about the 17th of August.

Mr. LISHMAN. Was he with you when you prepared this affidavit which is now in evidence?

Mr. HILGEMEIER. Yes, sir. I met him at 608 Fifth Avenue.

Mr. LISHMAN. But you swear that all the statements of fact contained in there are your own?

Mr. HILGEMEIER. Yes, sir.

Mr. LISHMAN. When you were given the \$1,500 ostensibly to keep quiet, what did you do with the \$1,500?

Mr. HILGEMEIER. I turned it over to Jack O'Grady at the time, and he gave it back to me. Since the fact that I had not been working since May I felt that I needed the money and I used it for personal needs, rent, et cetera.

Mr. LISHMAN. You were paid the \$1,500 to keep quiet. Yet you immediately went with the money to a reporter and spilled the whole story to him. Why did you do that?

Mr. HILGEMEIER. I felt, sir, that I was not part of anything these people were doing. I didn't really feel that the money was mine, and I felt it should be made public. So I called the newspapers and I told them about it.

Mr. LISHMAN. Did you return the money at any time?

Mr. HILGEMEIER. No; I did not.

Mr. LISHMAN. Did you tell us that Miss Kimball had been paid \$4,000 by Cooper Associates?

Mr. HILGEMEIER. Yes, sir.

Mr. LISHMAN. Did you know she had been paid that amount?

Mr. HILGEMEIER. Yes. Miss Kimball told me at one time that she had a \$6,000 note due on June 1 on her house and she told me she had part of it but needed the remainder of the money and consequently

she sought the figure of \$4,000 which was the balance on the note she owed.

Mr. LISHMAN. How did you know that Miss Kimball had been paid \$4,000 by Cooper Associates?

Mr. HILGEMEIER. I went down to Mr. Hoffman's office at one time.

Mr. LISHMAN. He represented both you and Miss Kimball?

Mr. HILGEMEIER. He represented Miss Kimball. I dropped his counseling.

Mr. LISHMAN. Continue and state how you know this.

Mr. HILGEMEIER. I was represented by counsel, Mr. Irving Tannenbaum of New York City. Mr. Tannenbaum was trying to get Yeffe Kimball on my side. He had been writing letters to her, having me to go to her apartment to get her to try to drop by the office. However, I didn't do it.

Mr. LISHMAN. Were you ever contacted by any representative of CBS with respect to the occurrences you have testified?

Mr. HILGEMEIER. No, sir, I was not.

Mr. LISHMAN. Were you ever contacted by any representatives of the sponsor, Colgate Palmolive Peat?

Mr. HILGEMEIER. No, sir, I was not. I went to Colgate at one point with the affidavit and told them about it also.

Mr. LISHMAN. What happened?

Mr. HILGEMEIER. I originally spoke to a gentleman, I don't remember his name, and he told me that they would take care of this thing. He told me in plain English that they would take care of me. I left the office and I was at Colgate a short time thereafter where I met the vice president, and about 14 other gentlemen at a conference. They wanted the whole story. I gave it to them.

Mr. LISHMAN. Do you remember the name of the man at Colgate that you spoke to?

Mr. HILGEMEIER. No, I don't remember his name. It has been some time.

Mr. LISHMAN. What did you mean by saying that someone at Colgate told you that they would take care of you? What did you understand that to mean?

Mr. HILGEMEIER. I don't know, sir. Apparently from his tone of things, possibly an amount of money.

Mr. LISHMAN. Did there come a time when your affidavit of July 25, 1958, was sent by you to the Federal Communications Commission?

Mr. HILGEMEIER. I am sorry. Repeat the question.

(Question read by the reporter.)

Mr. HILGEMEIER. Yes, it was.

Mr. LISHMAN. Did you write a letter to the Federal Communications Commission concerning the occurrences which you have testified to this morning?

Mr. HILGEMEIER. Yes, I did, sir. Jack O'Grady and I did this. I later on called the FCC in Washington. The only thing these gentlemen told me was that they had received my complaint and they would look into it. That is the last thing I heard of it.

Mr. LISHMAN. Were you ever interviewed by any representative of the Federal Communications Commission with respect to this matter?

Mr. HILGEMEIER. No, I was not. I wanted to do this. I wanted to find out what was happening, I got a cold shoulder from them.

Mr. LISHMAN. Is it a fact that immediately after you had broken this story to the newspapers that this show was canceled?

Mr. HILGEMEIER. Yes, it was.

Mr. LISHMAN. Immediately after your meeting with Colgate officials it was canceled?

Mr. HILGEMEIER. Yes, it was. The only person that ever contacted me, I should say, was Gene Gleason, who is a runner for Harriet Van Horn from the Telegram. He sought me out one evening and point-blank came over to me and handed me an affidavit whereby a number of quiz show contestants were involved in fix charges. He handed me this affidavit and told me to read it. When I read it, he said, "How come they didn't get you in time"? I don't remember some of the people involved. Jack Paar was involved and mentioned in this affidavit, and a number of other people. I read this. He would not give me a copy of it, however.

Mr. LISHMAN. Mr. Gleason has denied to our staff the existence of any such documents that you referred to.

Mr. HILGEMEIER. If you would like to subpoena my wife, sir—I am here, of course—but the affidavit did exist and he showed it to me.

Mr. LISHMAN. It is a fact that immediately after you had told the Colgate people of the fact that the show was apparently fixed, it was canceled at once?

Mr. HILGEMEIER. Yes, sir. Within a relatively short time, I think it was 2 weeks.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS. Mr. Hilgemeier, where are you from, originally?

Mr. HILGEMEIER. Indianapolis, Ind.

Mr. ROGERS. You live in New York?

Mr. HILGEMEIER. Queens.

Mr. ROGERS. Did you actually want to go on this show?

Mr. HILGEMEIER. No. As I stated previously, I had been on six other shows and never saw any fraudulent practices being administered by anyone personally. I didn't want to become a part of something that was a little fraudulent like this. I am in show business and I felt it could hurt me if I became a part of it.

Mr. ROGERS. Is it your position that the \$1,500 you took was payment to you in settlement of whatever lawsuit you might have against them?

Mr. HILGEMEIER. That is what they claim. I took it as evidence. I had no other proof that this thing happened. I took it on the advice of Jack O'Grady.

Mr. ROGERS. They took the position that they were settling a threatened lawsuit so that you would not go to court and sue them?

Mr. HILGEMEIER. That is true, sir. I signed three documents for the moneys that I would not sue, a general release. Also that I was not represented by an attorney. Also that after conducting a thorough investigation of the whole situation that I was satisfied that there was really no fix.

Mr. ROGERS. Did you threaten a lawsuit?

Mr. HILGEMEIER. No, sir, I didn't.

Mr. ROGERS. Did you have a lawsuit in mind?

Mr. HILGEMEIER. No. I didn't know what I had, sir. I never really came out with any kind of suit against them at all.

Mr. ROGERS. You considered this hush money?

Mr. HILGEMEIER. No, sir, I did not at all.

Mr. ROGERS. What did you consider it?

Mr. HILGEMEIER. If I considered it hush money, why would I have a reporter from a newspaper sitting out in the corridor with me?

Mr. ROGERS. That is the next question.

Mr. HILGEMEIER. You are ahead of me.

Mr. ROGERS. What did you consider it?

Mr. HILGEMEIER. I took the money, as I stated, as evidence that the thing actually happened, and I turned it over to the newspaper. I had no proof that this thing happened unless I had the money. I was having a great deal of trouble at the time financially, and for me to walk in with no money and walk out with \$1,500, I just pulled it out of the air.

Mr. ROGERS. Did you pay a lawyer's fee?

Mr. HILGEMEIER. No.

Mr. ROGERS. Did he ever complain?

Mr. HILGEMEIER. Sidney Hoffman? No. He told me I could only settle through his office. Only through his office could this thing be settled, and nobody else.

Mr. ROGERS. But you settled it without his help.

Mr. HILGEMEIER. Yes.

Mr. ROGERS. Did you consider this activity that you uncovered by these notebook papers a fraud?

Mr. HILGEMEIER. Yes.

Mr. ROGERS. Or fair entertainment?

Mr. HILGEMEIER. I considered it a fraud.

Mr. ROGERS. You were not a subscriber to the policy that anything you can get away with is all right?

Mr. HILGEMEIER. I certainly do not.

Mr. ROGERS. I believe that is all, Mr. Chairman.

The CHAIRMAN. Mr. Devine.

Mr. DEVINE. Just a couple of questions.

Mr. Hilgemeier, other than these other quiz programs that you had appeared on, how long prior to this particular appearance had you been employed?

Mr. HILGEMEIER. I don't know quite what you mean. You mean in show business?

Mr. DEVINE. You say you are a comedian.

Mr. HILGEMEIER. I have been working quite a long time in club dates.

Mr. DEVINE. Have you been employed since this occurrence?

Mr. HILGEMEIER. I cannot get a job in New York. They won't give me an audition. They won't look at me. I have been bodily thrown out of several night clubs.

Mr. DEVINE. Because of your revelations in this particular thing?

Mr. HILGEMEIER. Yes. I was picked up and thrown out the front door. This is a matter of police record in Mount Vernon, N.Y.

Mr. DEVINE. As a result of your revelations you are persona non grata in New York?

Mr. HILGEMEIER. Yes. A number of things that people have said about me on television have been very damaging to me and as a result I can't get a job in New York.

Mr. DEVINE. Thank you.

Mr. HILGEMEIER. I sued Jack Paar, by the way, for \$750,000.

Mr. DEVINE. I understand you say you have filed suit.

Mr. HILGEMEIER. I have filed suit 3 weeks ago in the supreme court of New York County.

Mr. DEVINE. For \$750,000?

Mr. HILGEMEIER. Yes, sir; for libel.

Mr. DEVINE. For libel?

Mr. HILGEMEIER. Yes.

Mr. DEVINE. Thank you.

Mr. HILGEMEIER. Actually Jack Paar didn't accuse me of blackmail. Billy Pearson, the jockey, did, but Jack Paar endorsed his comments by having them brought out during the show. Jack said to him: "Billy, tell me what you told me before this show." So he brought it out, and that was it.

Mr. DEVINE. That is all, Mr. Chairman.

The CHAIRMAN. That will conclude your testimony.

Mr. HILGEMEIER. Thank you, sir.

The CHAIRMAN. With the thanks of the committee, you may be excused.

Mr. HILGEMEIER. Thank you very much.

The CHAIRMAN. Now I might say in view of the testimony given by this witness about Miss Marie A. Winn, the committee has tried diligently to obtain her, but she is in Europe and, therefore, out of the reach of the jurisdiction of the committee. I am authorized to make the statement that she did appear before the grand jury in New York. We do have a copy of her sworn statement. She corroborates this witness by stating that she, too, received the assistance, as this witness has testified of his experience. That is true, is it not, Mr. Lishman?

Mr. LISHMAN. Yes. She testified she was given the questions and answers.

The CHAIRMAN. She testified she was given the questions and answers as has been described by this witness, and viewed here on the kinescope. Is Mr. Jurist in the room?

(No response.)

The CHAIRMAN. The committee will recess until 1:30, at which time the committee is asked to meet in the committee room to consider the request of Mr. Jurist, who is producer of the "Dotto" show that he be heard in executive session under the provisions of the rule of the House of Representatives to which I referred earlier. It is hoped, and I am sure we will, be back here for a continuation of the public hearing by 2 o'clock or shortly after. The committee will adjourn.

(Thereupon at 12:35 p.m., the committee recessed to reconvene at 1:30 p.m., in executive session.)

The special subcommittee met in executive session at 1:30 p.m., in room 1334, New House Office Building, Hon. Oren Harris (chairman) presiding, a quorum being present.

(The testimony taken at this executive session was released by the subcommittee by vote taken November 3, 1959.)

The CHAIRMAN. The committee will be in order.

Mr. Dowd is the witness.

Mr. Dowd, will you be sworn?

Do you solemnly swear the testimony you give to this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

TESTIMONY OF MARTIN DOWD

Mr. Dowd. I do.

The CHAIRMAN. Will you have a seat? Will you state your full name?

Mr. Dowd. Martin Dowd.

The CHAIRMAN. How do you spell it?

Mr. Dowd. D-o-w-d, sir. Martin, M-a-r-t-i-n.

The CHAIRMAN. What is your address?

Mr. Dowd. 974 Anchor Court, New Milford, N.J.

The CHAIRMAN. What is your business or profession, Mr. Dowd?

Mr. Dowd. I am a sales correspondent for a folding paper box company, sir.

The CHAIRMAN. Did you have any association with what is commonly referred to as the quiz show, "Tic-Tac-Dough"?

Mr. Dowd. Yes, I did, Mr. Harris.

The CHAIRMAN. Mr. Dowd, the rules of the House of Representatives provide under rule XI, 26, of the Rules of the House of Representatives, paragraph (M) :

If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness, and (3) receive and dispose of requests from such person to subpoena additional witnesses.

With that information, you have requested that your testimony in connection with your part on the show, "Tic-Tac-Dough," be taken in executive session?

Mr. Dowd. Yes, Mr. Harris.

The CHAIRMAN. Could you give the committee the reasons why, Mr. Dowd?

Mr. Dowd. There are several.

One, sir, I felt certain I would lose my means of support. I am married with two children. That is one reason.

Another reason is that there has been a great deal of tension in my family just recently. On Saturday, as I told Mr. Goodwin, my little girl was hit by a car. She went to the hospital and she is just out, but her mother, the child's mother, my wife and my wife's mother are very upset about this. They are not well. I feel that this coming on top of that would be a great blow.

Mr. LISIMAN. May I also ask a question at this point?

Is it not also a fact, Mr. Dowd, that at first when you were called before the grand jury, you refused to testify and considerable pressure had to be brought to bear and eventually you voluntarily came in and recanted your earlier position?

Mr. Dowd. Yes.

Mr. LISIMAN. Your testimony might in some quarters be construed as tending to incriminate and degrade yourself?

Mr. Dowd. Yes.

Mr. LISHMAN. In the light of your two separate appearances before the New York County Grand Jury?

Mr. Dowd. Yes, sir.

I might also point out—I don't know how relevant this is—I did go to Mr. Felsher and ask him to tell the truth after I told the truth.

The CHAIRMAN. Who is Mr. Felsher?

Mr. Dowd. He is the producer of "Tic-Tac-Dough."

I went to him voluntarily. I was not asked to go to him. I felt I had an obligation to ask him to tell the truth to the grand jury. I think eventually he did do it.

The CHAIRMAN. Do you contend, Mr. Dowd, that in addition to yourself that your testimony might tend to in some way degrade your own family?

Mr. Dowd. I do. I think it would cause them great grief and public deprecation.

Mr. Moss. The only point I would make, Mr. Chairman, is that there is no assurance that this committee can give to Mr. Dowd that the testimony which is received will not be made public at some future date.

The CHAIRMAN. That is true.

I certainly wanted to make it very clear to you, Mr. Dowd, that the rules also provide, paragraph (o), that no evidence or testimony taken in executive session may be released or used in public session without the consent of the committee.

Consequently, you should be advised that should the committee subsequent to your appearance decide to make the testimony which you give public, that would be a decision of the committee, or if the committee decided it was necessary to use it publicly, that would be the decision of the committee.

Mr. Dowd. I understand that, sir.

The CHAIRMAN. With this information and your statement, under the circumstances we deem it proper to proceed with your testimony in executive session.

Do you want him to make a statement, Mr. Lishman, or do you wish to ask some questions?

Mr. LISHMAN. I can ask a few questions and then he can tell in his own words his participation as a contestant in "Tic-Tac-Dough" and the manner in which he received information in advance of his appearance.

The CHAIRMAN. First, you were a contestant?

Mr. Dowd. Yes, sir.

The CHAIRMAN. On the show "Tic-Tac-Dough"?

Mr. Dowd. Yes, sir.

The CHAIRMAN. Will you proceed, Mr. Lishman?

Mr. LISHMAN. On how many performances of "Tic-Tac-Dough" did you appear?

Mr. Dowd. On the daytime show, I believe it was four. It was four on the daytime show, yes.

Mr. LISHMAN. Did you appear on the nighttime show?

Mr. Dowd. I appeared on the nighttime show, I believe, eight or nine times.

Mr. LISHMAN. At about what period did you appear on the daytime show?

Mr. Dowd. The daytime show was November of 1957.

Mr. LISHMAN. And the nighttime show?

Mr. Dowd. The spring of 1958. Probably February, March, April.

Mr. LISHMAN. Prior to going on the show, were you a friend of the producer, Howard Felsher?

Mr. Dowd. Yes.

Mr. LISHMAN. Howard Felsher was your friend?

Mr. Dowd. Yes.

Mr. LISHMAN. Is that how you came to get on the show?

Mr. Dowd. Yes, that is how I came on the show. I took two tests. I took one test and I did not do too well on it. He advised me to study. I did study. The second test I took on the Friday prior to Thanksgiving 1957. I took the test. He came back and he said to me—do you want me to continue?

Mr. LISHMAN. Yes, go ahead.

Mr. Dowd. He said to me, "Well, the test is OK. It is good. We have a fellow on here who is winning too much money, and you are going to beat him."

I said, "I don't think I should."

He said, "Of course you should."

I had not told Mr. Felsher, but I was in very serious need of money at the time. I agreed that I would do it. Mr. Felsher then gave me every question and every answer for the Monday show.

Mr. LISHMAN. Was this daytime or evening?

Mr. Dowd. Daytime. He gave me every question and answer.

Mr. LISHMAN. In advance of your appearance?

Mr. Dowd. In advance of my appearance.

Generally I believe on Friday and Saturday prior to Thanksgiving 1957, he gave me all of the questions and answers. Every day at night he would give me new questions and new answers. He coached me on when I was—

Mr. LISHMAN. Would those new questions and new answers then be used on the next program?

Mr. Dowd. Yes. They may or may not. Maybe we would not get to them. But he always covered the eventuality.

Mr. LISHMAN. Go ahead.

Mr. Dowd. He also told me when to win.

For example, he said, if your opponent, who had won about \$7,000, fails and you have only won a thousand from him, don't win. Tie. He instructed me that only when we got to a figure of about \$3,500 was I to win.

I did as he told me. In fact the opponent did not lose until he lost about \$5,000—no; about \$4,500. Then I won. The opponent missed a question and I won.

At that time I had I guess about \$4,500. I played another contestant and another contestant and I won again and then Mr. Felsher told me when to lose. He told me first I must tie my opponent, even missing a question, and I did miss questions to tie my opponent. I must tie my opponent until I had lost about \$3,000, roughly. I think maybe it is closer to \$2,800. That was subtracted from my winnings, and I won a net amount of \$3,800.

Mr. LISHMAN. That is on the daytime show?

Mr. Dowd. That is right, sir.

Mr. LISHMAN. Did the same procedure occur on the nighttime show performances on which you appeared?

Mr. DOWD. Yes.

Mr. LISHMAN. Every one of them?

Mr. DOWD. Every question and every answer.

Mr. LISHMAN. How much did you win from the nighttime show?

Mr. DOWD. I received from NBC \$19,700.

Mr. LISHMAN. From NBC?

Mr. DOWD. Yes. A check. When I went on the nighttime show, I didn't want to go on. The opponent was Capt. Michael O'Rourke. He was winning a great deal of money. He was winning about \$110,000. It must have been more. He was winning about \$131,000, that is right.

I went on and Felsher told me that I had to beat O'Rourke. It was left open. I think he was thinking that possibly he would have O'Rourke continue to win more money and more money because he was such a good witness from the standpoint of audience appeal.

Mr. LISHMAN. A good contestant?

Mr. DOWD. A good contestant. An appealing contestant.

However, I had tied Mr. O'Rourke for about 11 games, which would represent roughly about \$30,000. Twenty-seven thousand dollars is closer to it. Then Mr. Felsher arranged to beat O'Rourke.

The way he did that is, Mr. Felsher told me what categories to go into, what questions to pick, so that eventually the baseball category would come up as Mr. O'Rourke's question. Mr. Felsher knew that Mr. O'Rourke was not proficient in baseball and Mr. O'Rourke did fail on that question. Then O'Rourke lost. He got \$108,000 and I was the so-called champion.

I proceeded for several weeks, always receiving the questions and answers prior to the program. In fact, Mr. Felsher used to meet me the day of the program and go over them, normally in his car, to make certain that I knew every question and every answer.

Eventually he said, "Well, you have gained or you have accumulated \$47,000, but we only want you to take home 10 or 12. I said that was not enough. We argued about that. Finally, I lost at \$19,000—when I would have a net amount of \$19,700.

Mr. Felsher said that he would lose his job if I won too much money. That is the substance of it.

I do say this: Whenever questions would come up about winners, Mr. Felsher would be very budget conscious. At one point he said Mr. Armstrong, who was the contestant in the daytime who had beat me, Mr. Armstrong dumped—or in other words, Mr. Armstrong quit. He knew the answers but he quit.

When I say he knew the answer but he quit, I don't think Mr. Armstrong was advised of the answer. I think he wanted to get out with his winnings because he could see this pattern where a contestant would accumulate a lot of money and then he would be tied until he lost a great deal of it. Mr. Armstrong left with a considerable amount of money, six or seven thousand dollars, and Mr. Felsher said "he put me over budget again"; the essence of that being that they had a budget. In other words, only so much could be won every day.

I am sure the committee is familiar with the mathematics of it. They could build up to tremendous amounts the amount at stake and then cut it down.

For example, if contestants could conceivably win \$10,000 a week, they could have a contestant go up to \$100,000. Then, instead of paying him \$100,000 if they had something tie him for \$30,000 of that, they only pay \$70,000. But they would have gotten 13 weeks out of it and an average of \$5,000 a performance rather than \$10,000 a performance if he had left at \$100,000.

Mr. LISHMAN. May I interrupt?

Mr. Dowd. Yes, sir.

Mr. LISHMAN. Is it a fact that in coaching you Mr. Felsher actually gave you the 3-by-5 cards with questions and answers typed on them so you could take them home and memorize them in advance of the show?

Mr. Dowd. He never let me take them home. They were never out of his possession. But I used the actual cards on the show.

Mr. LISHMAN. They were given to you in advance?

Mr. Dowd. In advance. Always in advance.

He let me copy them in his office, but he would never let me take them out of his office.

Mr. LISHMAN. When the grand jury investigation came along, did anybody try to keep you quiet about this story?

Mr. Dowd. Mr. Felsher called and he said that he was going to say that he never gave anyone answers. He telephoned that.

Later on I saw him before I testified. I asked Mr. Felsher to tell the truth. I said that I didn't think he could get away with not telling the truth.

Mr. Felsher said there were too many people involved, contestants would be hurt, they would lose their means of livelihood, and the entire office force of Barry & Enright would lose their jobs. They would be affected adversely.

Mr. LISHMAN. Did Mr. Felsher threaten you in any way after you left the show?

Mr. Dowd. No.

Mr. LISHMAN. Did Mr. Felsher threaten you in case you refused to appear against Captain O'Rourke?

Mr. Dowd. No. I didn't want to appear against Captain O'Rourke because I considered him too smart, and it would be just too obvious. He pressured me to appear against him. He did not threaten me.

Mr. LISHMAN. What did he say when you told him you were going back to the grand jury and tell the truth?

Mr. Dowd. I did not tell him that I was going to tell the truth when I did tell the truth.

After I testified to the grand jury to the truth, I went to Mr. Felsher and told him that I told the truth and he should tell the truth. What had happened, when I testified, I asked the district attorney's office if they would approve of my going to Felsher and asking him to tell the truth. They said they could neither approve nor disapprove. They left it up to me.

So, voluntarily, I went to him and I asked him to tell the truth. He was quite bitter about my telling the truth.

Mr. LISHMAN. Did Mr. Felsher request you to tell the grand jury that he had not given you the questions and answers?

Mr. Dowd. Yes, he did. I don't know if he was coached or not, but he was very careful about saying that. In other words, I said to Mr. Felsher—I met him the day before I was to testify—let us tell the truth. You can't get away with this.

He said we can't tell the truth. There are too many people affected. He went so far as to suggest to me that I not say that I had met him that evening. I told him that that would be ridiculous. I was certain that the district attorney's office knew that we were meeting.

Mr. LISHMAN. Now, Mr. Dowd, were you ever contacted by any representative of NBC concerning your participation in this fixed program?

Mr. Dowd. No, sir; I was not.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS. Mr. Dowd, did you say you got \$19,700 from NBC?

Mr. Dowd. Yes. The check is an NBC check. I believe the programs were owned by NBC so they sent the check.

Mr. ROGERS. Did you ever have any discussion at any time during this proceeding with any people from NBC as such, who were identified as people from the NBC group?

Mr. Dowd. No, sir; absolutely not.

Mr. ROGERS. Mr. Felsher, is that his name?

Mr. Dowd. Yes.

Mr. ROGERS. Is he the same one who was discharged by NBC because he would not make an affidavit?

Mr. Dowd. Yes, sir.

Mr. ROGERS. Saying that these charges were false?

Mr. Dowd. That is right, sir.

Mr. ROGERS. Where is he now?

Mr. Dowd. I don't know, sir. I have not seen him for many months.

Mr. ROGERS. When did you first find out that this was a fixed or rigged show?

Mr. Dowd. When I went into Mr. Felsher's office. I had taken the test. I had every intention of being an honest contestant. I had no idea that it was fixed.

He said, "You are going to beat this guy and I am going to give you the answers." This was the Friday preceding Thanksgiving.

I stood by on the program Monday and I was a contestant actually on the program on Tuesday.

Mr. ROGERS. You were a party to the misrepresentation from then on?

Mr. Dowd. Yes.

Mr. ROGERS. You knew everything that was going to happen from then on as far as your action was concerned?

Mr. Dowd. Yes. But they were very careful about telling one thing. They tried to be very careful about letting anybody know. Of course, matters that involved me I knew.

Mr. ROGERS. Yes; I understand that.

Mr. Dowd. They would not tell me if they had a following fixed candidate. I did not know that, sir.

Mr. Rogers. You did not know what they had told the other candidate but you knew what was going to happen to the other candidate or contestant when you went into the show?

Mr. Dowd. No; they never said to me he is fixed or he is not fixed. They didn't, sir.

Mr. Rogers. I understand that. I mean from what they told you, they told you you are going to win tonight?

Mr. Dowd. Yes, sir.

Mr. Rogers. Or you are supposed to lose or you are supposed to tie?

Mr. Dowd. That is right.

Mr. Rogers. You knew exactly what was going to happen in the game?

Mr. Dowd. I knew what they wanted me to do exactly. I was told exactly what to do.

Mr. Rogers. Did they tell you all three at any particular time, that you would win, tie, and lose, or vice versa.

Mr. Dowd. They didn't happen at the same time, sir. Of course, when they threw the curve at Mr. O'Rourke, I strongly suspected that they would. They didn't say to me that he was going to lose that night. But they told me exactly what boxes to use so that he would get that category and it was well known that he was weak in that category.

Mr. Rogers. Did you consider it a sort of fraudulent or dishonest operation?

Mr. Dowd. I did. I thought it was a pretty rotten thing to do.

Mr. Rogers. Did it worry you quite a bit?

Mr. Dowd. Yes. I thought I was pretty crummy to do something like that.

Mr. Rogers. Did you feel a lot cleaner after you went to the grand jury and told the truth?

Mr. Dowd. I did.

Mr. Rogers. You felt like you had a bath, did you not?

Mr. Dowd. Yes, sir. I felt a lot better about it. I did.

Mr. Rogers. I believe that is all, Mr. Chairman.

The CHAIRMAN. Mr. Moss.

Mr. Moss. Mr. Dowd, was this the type of program which could have been effectively fixed over a period of approximately 9 weeks unless both contestants were participating in the fix?

Mr. Dowd. I think so, given a very bright opponent. The questions were not so difficult. They were common knowledge, things that you should remember but don't. If a man had a phenomenal memory, as some people do, and he was the opponent, it would be possible to work with it.

As a matter of fact, I am sure that was the case. Because I was told with O'Rourke, if he misses you miss. That was it. In other words, apparently he was not fixed. I am sure he was not because he was a brilliant young man. He is an Army captain. One of the reasons I feel bad about this whole thing is if his name ever gets involved, it would be a shame because in my own mind I am certain he was honest. I am positive of it.

Mr. Moss. How many weeks had he been on the program?

Mr. Dowd. I imagine it must have been around—in order to win—he must have been on 18 weeks at least, sir.

Mr. Moss. In 18 weeks you feel that he would not lose to other brilliant men?

Mr. Dowd. He almost lost everything he had.

Mr. Moss. But he did not?

Mr. Dowd. But he didn't. I just can't believe he would be dishonest.

Mr. DEROUNIAN. Is that the captain who had the foods and the menus?

Mr. Dowd. No, sir. You are thinking of the "\$64,000 Question." This is a different captain, sir.

Mr. LISIMAN. This is "Tic-Tac-Dough" on a board and you pull categories out and you do it on X's and O's.

Mr. Moss. You were usually told at the conclusion of an evening you would be tied or you would be winner?

Mr. Dowd. Yes. I am certain he was not fixed, sir. I think I can illustrate a reason why not.

I made a mistake and the program ended. I made a mistake and it was possible for the captain to win. If they controlled the captain they could have just told him to miss the winning question. But they didn't. They worked it out in such a way that the categories came up so that it became a tie. I didn't think it was possible but they managed it. They were very clever.

Mr. Moss. Let me understand. You made a mistake?

Mr. Dowd. I made a mistake.

Mr. Moss. You missed your line. At that point he could have won?

Mr. Dowd. He could have won.

Mr. Moss. But it ended in a tie and this was through manipulation of categories when they wanted him to lose?

Mr. Dowd. They didn't want him to lose or win. They wanted him to tie to lose money.

Mr. Moss. He tied even though you had muffed your line?

Mr. Dowd. But in order to do this, in order to make this tie become possible, they had to manipulate the categories in an unusual way.

This Captain O'Rourke was quite bright. He had figured out the categories that the boxes would take. There are nine boxes, X's and O's. The nine boxes each had a different category. He was so clever, which category would come up, for example. He was always thinking ahead. What they did was to change the pattern to throw him off and enable a tie.

Mr. Moss. How do you know they changed the pattern?

Mr. Dowd. Because he mentioned it after the program to Mr. Felsher and Mr. Felsher said we don't have any set pattern. We can't guarantee a pattern. It may come out most of the time this way, but it may sometimes not come out. I am certain it was contrived.

Mr. Moss. That was a conclusion then; you do not know.

Mr. Dowd. Mr. Felsher said to me after the program, we made it, or something like that. He said "He is upstairs, Captain O'Rourke, trying to figure out what happened."

In other words, O'Rourke—in fact O'Rourke asked him—Mr. Felsher said O'Rourke asked me why didn't the patterns come up consistently like they normally do.

Mr. Moss. Do you suppose his puzzlement had been because you did not answer the question the way you were supposed to?

Mr. Dowd. That was the next week. The change in the pattern occurred the following week. The previous week.

Mr. Moss. I am talking of the program where you muffed your line.

Mr. Dowd. When I muffed my line, there was not any question. He was very happy about it. He was not surprised or anything. I am sure he would have gone on to win if it had not been a coincidence that the end of the program was there. The time ran out.

Mr. Moss. It is just wherever I see an interesting coincidence in this pattern, I am suspicious.

Mr. FLYNT. Mr. Dowd, is it not possible that he was given the required amount of assistance by simply developing a pattern, that they either actually disclosed to him or did it by indirection by following the same pattern each time?

Mr. Dowd. I am sorry to say, sir, I don't follow the tenor of your question.

Mr. FLYNT. I will try to rephrase it or make it a little clearer.

Is it not possible that the manner in which he was given assistance was by developing a pattern that he could follow?

Mr. Dowd. No, he was a very clever fellow. There was a pattern there if one wanted to search for it. I am sure of that. I had heard it from other people.

No, I don't think they gave him a pattern or exposed it. He was clever enough to figure it out for himself. He was brilliant. Before the program we would often ask things and Captain O'Rourke just knew everything.

Mr. FLYNT. In categories he knew?

Mr. Dowd. No. Anything. You name it, and he would name it. He was a very bright person.

Mr. Moss. Did Mr. Felsher ask Mr. O'Rourke any questions before the program?

Mr. Dowd. Not to my knowledge. They never did that at "Tic-Tac-Dough".

Mr. Moss. Did they have any conferences that you knew of before the program?

Mr. Dowd. I can't remember any.

Mr. Moss. What is your best recollection? Did they or did they not?

Mr. Dowd. They may have had some. I think they may have had some because it was the sort of program where we would have to speak to Mr. Felsher before. He had to speak to Mr. Felsher before.

For one thing, there was mail. He was always getting letters from people.

For another thing, Mr. O'Rourke used to fly in so he was not available at any other time except before the program.

Mr. Moss. Do you recall any of these conferences?

Mr. Dowd. No, I don't specifically.

In other words, I don't remember ever seeing them go into a closed room together. Generally speaking, we were all together all the time.

Mr. Moss. Your impression is that they did have conferences?

Mr. Dowd. Yes, it was, sir.

Mr. Moss. Were they short or long conferences, to the best of your recollection?

Mr. Dowd. When I say conferences, I think that any conferences they might have had would probably have taken place some place else other than the theater. Maybe O'Rourke saw him at the offices of Barry & Enright during the day prior to the show. To my mind O'Rourke was not fixed. I just can't believe it.

Mr. Moss. I am not asking you for your opinion there.

Mr. Dowd. I am sorry, sir.

Mr. Moss. I am asking you as to the conferences.

You say they might have taken place in O'Rourke's room?

Mr. Dowd. In his hotel room or in Felsher's office the day of the show.

Mr. Moss. You feel that they probably took place.

What do you base that on?

Mr. Dowd. I base it on this: One night when I was receiving questions and answers at the offices of Barry & Enright, 667 Madison Avenue, Mr. Felsher received a long-distance call, I believe from O'Rourke, saying that O'Rourke was flying in. I just gathered the impression that he did see him before the show.

Mr. Moss. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Dowd, thank you very much for your appearance.

As far as I know, Mr. Dowd can be excused. Is that right.

Mr. LISHMAN. Yes.

The CHAIRMAN. You may be excused, if you like.

Mr. Dowd. Thank you, sir, very much. Thank you, gentlemen.

(Thereupon, at 2:25 p.m., the committee proceeded to other business.)

The special subcommittee met in executive session at 2:25 p.m., in room 1334, New House Office Building, Hon. Oren Harris (chairman) presiding, a quorum being present.

(The testimony taken at this executive session was released by the subcommittee by vote taken November 3, 1959.)

The CHAIRMAN. The committee will be in order. Mr. Jurist, will you come to the witness stand, please? Will you be sworn?

Do you solemnly swear the testimony you give to the committee to be the truth, the whole truth and nothing but the truth, so help you God?

TESTIMONY OF EDWARD JURIST

Mr. JURIST. I do.

The CHAIRMAN. State your full name for the record.

Mr. JURIST. Edward Jurist.

The CHAIRMAN. Give your address.

Mr. JURIST. 311 North Alpine Drive, Beverly Hills, Calif.

The CHAIRMAN. What is your business or profession?

Mr. JURIST. I am a free lance television writer and producer.

The CHAIRMAN. Mr. Jurist, you have contacted me and Mr. Lishman of our staff the last few days about the difficulty of your appearance here.

Mr. JURIST. Yes.

The CHAIRMAN. You were rather insistent on sending in just a statement to be filed for the record and avoid your personal appearance on the basis of the illness of your wife.

Mr. JURIST. Yes, sir.

The CHAIRMAN. After several telephone conversations I finally advised you if you would come on here today we would hear you as soon as possible, that we could get to you in order that you would then be able to return home.

Now, in doing so, you indicated that you would feel better about it or be more willing to come under the circumstances, if the committee would hear you in executive session. Is that true?

Mr. JURIST. Yes, sir.

The CHAIRMAN. I think it is my duty as chairman of the committee to advise you of the rules of the House that are applicable.

Under rule XI, 26 of the rules of the House of Representatives, paragraph (m), it is provided that if the committee determines that evidence or testimony at an investigative hearings may tend to defame, degrade, or incriminate any person, it shall, (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpoena additional witnesses.

At the same time, I might advise you, also, that in paragraph (o) of the rules, it is provided that no evidence or testimony taken in executive session may be released or used in public sessions without the consent of the committee. In other words, I think you should be advised, Mr. Jurist, that any testimony you give in executive session under the provisions of the rules which I have just read, that the committee may, subsequent to the hearing, determine that that testimony does not come within the provisions of paragraph (m) and, therefore, release it to the public or use it in public session.

I believe you understand that provision?

Mr. JURIST. Yes. May I point out something in relation to this?

The CHAIRMAN. Yes.

Mr. JURIST. In addition to the point you made about my wife being ill and leaving her in a rather critical situation against the advice of her psychiatrist, and in addition to traveling 6,000 miles to cooperate with this committee, I also have a very critical business problem.

Having gone to Hollywood a year ago, I have spent that year trying to establish myself both as a writer and more particularly, as a producer, which has been rather difficult. I have produced one thing, which is a pilot film, which is just at this moment on the point of being purchased. In fact, today in the Desilu lot in Hollywood a meeting is taking place which is very critical and at which I should be present.

All I can tell you is that if my name appears in the paper I am dynamited for that job.

The CHAIRMAN. Is that because of the fact that the testimony that you will give, the facts of which you have knowledge, are such that would tend to defame or degrade your own name?

Mr. JURIST. In essence I would say yes, mine and that of others, perhaps. Other contestants, other associates. Also, because of the

business in which I work. Since you have been reviewing it, I am sure you understand it is one of the most frightened in the country, you know.

The CHAIRMAN. Under the circumstances, I think the committee is justified in hearing you in executive session. Of course, as I have already advised, it will be the decision of the committee as to whether or not we feel it in the public interest to make your testimony available to the public or to be used.

Mr. JURIST. I understand.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Jurist, you were the producer of the television show, "Dotto"?

Mr. JURIST. Yes, sir.

Mr. LISHMAN. For how long a period were you the producer of the show "Dotto"?

Mr. JURIST. From the time it went on until the time it went off.

Mr. LISHMAN. About what date was that?

Mr. JURIST. I have no recollection of that at all.

Mr. LISHMAN. For how long a period was "Dotto" on the air?

Mr. JURIST. I am just guessing. Nine months.

Mr. LISHMAN. What was your connection with the production?

Mr. JURIST. I was the producer.

Mr. LISHMAN. Who was your employer?

Mr. JURIST. The Frank Cooper Associates.

Mr. LISHMAN. Did you have complete charge of the production itself?

Mr. JURIST. Substantially, yes.

Mr. LISHMAN. Was it Cy Fisher of the Cooper Associates who hired you?

Mr. JURIST. Yes, I would assume he and Frank Cooper.

Mr. LISHMAN. Had you been the producer of other TV quiz shows?

Mr. JURIST. Yes, sir.

Mr. LISHMAN. Would you please name these other shows?

Mr. JURIST. "Quiz Kids", "Giant Step", "\$64,000 Challenge". I think that is it.

Mr. LISHMAN. Was assistance ever given to contestants in these shows in advance of their reproduction on the air?

Mr. JURIST. We will have to go into the word "assistance."

Mr. LISHMAN. Were the contestants given the questions and answers in advance of the program?

Mr. JURIST. Not to my knowledge.

Mr. LISHMAN. What type of assistance was given?

Mr. JURIST. May I start from a beginning point?

Mr. LISHMAN. Yes, sir.

Mr. JURIST. Every effort was made to control the shows.

Mr. LISHMAN. What do you mean by "control"?

Mr. JURIST. Everything that happened on the show happen according to the desires of the producer. That was the aim. It mostly succeeded. Sometimes it failed. Primary procedure was to find out what people knew and frame questions accordingly.

The second procedure, to inculcate is a word I like to use, the people with information you thought they ought to have in such a way that they ideally were not aware you were doing it. That would be, I would say, the extent on those other shows.

Mr. LISHMAN. On the "\$64,000 Challenge," which type of control was used there?

Mr. JURIST. There was probably less need for control there than on most other shows, except the "\$64,000 Question." I take those two shows together, for the obvious reason that the contestants were highly qualified experts in a very narrow field and anybody can study Napoleon and really digest almost everything about Napoleon in very short order. It is not the same as knowing everything about everything. So there it would be a question of qualifying them in the first place, which was a primary step on those shows. Then, finding out what areas they were strong in and what areas they were weak in.

That would sometimes be enough. Most times enough, I would say, if you had a really qualified expert and in most cases they did.

Mr. LISHMAN. In other words, you had an applicant that you would screen to find out whether he would be qualified and you would go into the category, American history, let us say, you would proceed to give him a very thorough examination in the American history, during the course of which you would ask numerous questions which might subsequently be telescoped together or rearranged in such a way that he had been furnished the information in advance of the actual question that was later asked on the show.

Mr. JURIST. Actually, you are distorting what I said.

Mr. LISHMAN. Will you explain it, then?

Mr. JURIST. If you ask a person a question and he gives you an answer, you have not given him an answer. Am I correct?

Mr. LISHMAN. That is correct.

Mr. JURIST. That is the procedure I am talking about. If you ask a lot of questions of an expert in a particular field you are learning a great deal about what he knows. Also, one thing will tell you another. If a person is an expert on music and he knows a not too popular 17th century Italian composer, obviously he must know Beethoven's first name. Do you know what I mean?

Mr. LISHMAN. Yes.

Mr. JURIST. So you can conclude things from the questions you ask.

Mr. LISHMAN. Did it happen on these other quiz shows—on the challenge show—that questions used there had actually been asked of the contestant in advance of his appearance on the show?

Mr. JURIST. I really cannot say. I have to explain why. Actually, my being producer of that show was only a stopgap.

The CHAIRMAN. What show is it? There was more than one challenge.

Mr. LISHMAN. The "\$64,000 Challenge."

Mr. JURIST. There was the "\$64,000 Question" and the "\$64,000 Challenge," two separate shows produced by the same office.

The CHAIRMAN. You are talking about the "\$64,000 Challenge"?

Mr. JURIST. Yes. Actually, one show had gone off and to keep me occupied, they put me on that show for like 10 weeks or 9 weeks or something. My principal job was to be cerebral and write funny interviews. I really did not have much contact with the contestants. Most of what I am telling you about that show is surmised based on my knowledge of the people.

Mr. LISHMAN. Would you say that in a substantial percentage of the performances of the "\$64,000 Challenge" that assistance of some

kind was given to the contestant in advance of his appearance on the show?

Mr. JURIST. In the sense that I have just explained, yes. In essence that is really the same thing. If you ask a person and you ferret out what he knows, you are helping him when you prepare material which you feel he can answer or cannot answer.

Mr. LISHMAN. In a substantial percentage of the performances you, as a producer, would know in advance of the actual show who was going to win?

Mr. JURIST. Yes, who we hoped would win.

Mr. LISHMAN. Who you were fairly certain would win?

Mr. JURIST. Fairly certain.

Mr. LISHMAN. Didn't it turn out that way?

Mr. JURIST. Most of the time.

Mr. LISHMAN. In other words, you proceeded on the basis that you would find out what people knew and then ask them about what they knew.

Mr. JURIST. I would say—that is only surmise because I do not know anything about other shows on which I did not work—I would assume that would be the obvious principal method of control or the clever one. Let me put it that way.

Mr. LISHMAN. When you came to "Dotto" as its producer, what kind of controls were used on that show?

Mr. JURIST. Much more severe controls. The same ones to begin with. A questionnaire was given to everybody. Also, they were sounded out by the whole staff in concord as far as personality. Many people who qualified in other respects would be rejected because they obviously would not be good hams, you know. Further than that, we definitely held interviews with them—my associates did—in which they picked out as much information as they could from their background and their information.

Questions were framed to accommodate their information. Following that, because of the fact that we had a day-to-day operation, and to try to assure ourselves further that things would not so much come out the way we wanted them, but that they won't look like asses, we would interview them in the studio before the show and ascertain in whatever way we could that they would be able to answer the questions.

This method was planned to be a subtle method. It was not always so subtle, obviously.

Mr. LISHMAN. Weren't there instances in which you actually gave the answers to the contestants?

Mr. JURIST. There is one classic example.

Mr. LISHMAN. What is that?

Mr. JURIST. The example, I don't remember her name.

Mr. LISHMAN. Marie Winn?

Mr. JURIST. Yes.

Mr. LISHMAN. Were there others who were given answers?

Mr. JURIST. After finding that out, I presume there were.

Mr. LISHMAN. Were there occasions when either the sponsor or someone connected with the advertising agency would desire that a certain contestant should stay on?

Mr. JURIST. There was only one example of that. Well, no. I guess anybody would express an opinion, gee, that is a swell contestant. I hope she stays with us or he stays with us.

Mr. LISHMAN. If the sponsor should make such a suggestion to the producer, would the producer then proceed to implement that suggestion by giving questions in advance to such contestants?

Mr. JURIST. No.

Mr. LISHMAN. How would they assist such contestant to stay on the show?

Mr. JURIST. I am quibbling but I will have to continue to quibble because no one was ever told or had my permission to give answers to anybody. They did everything short of that, which I guess you can say in substance was giving them the answers. To me, it was not. To me it was perpetuating the illusion or the entertainment which is what this all was to me, entertainment. You would only spoil it by being obvious about it.

Mr. LISHMAN. In order to enhance the audience appeal did you arrange in advance for ties for certain of these programs?

Mr. JURIST. Yes, we certainly did.

Mr. LISHMAN. Would you explain how that was accomplished?

Mr. JURIST. We had another method besides questions and answers. We had another part to our show. We had pictures. The way in which these pictures fell, sometimes a person who was behind in questions could guess the picture because of the way the picture fell.

We designed the picture very carefully—a prominent feature was more important than a strand of hair, let us say. So if we provided that at that point that person would be able to get that picture. It would be the prominent thing. The other person would be ahead on questions so they would have more of a picture. Do you see what I mean?

Mr. LISHMAN. Were arrangements made with the contestants so that they should know how many points they should take?

Mr. JURIST. How many points they should take?

Mr. LISHMAN. Were arrangements made with the contestants so that they would tie?

Mr. JURIST. I don't really recall.

Mr. LISHMAN. In this game, isn't it true that when a contestant had 25 points he was given an additional clue?

Mr. JURIST. A clue. The clues were terribly crucial. Which clue we gave was important. We could give a vague clue or a specific clue.

Mr. LISHMAN. Was it arranged in advance and was the contestant notified as to what clue he would be given?

Mr. JURIST. No. Not to my knowledge.

Mr. LISHMAN. But you arranged it—

Mr. JURIST. Well, yes, if we said "lived in log cabin" we expected the guy to know it was Abe Lincoln. Who else lived in a log cabin, you know.

In other words, what I am saying is that with various kinds of controls we did everything we could to make the thing come out the way we wanted it to come out, the way that was most exciting and most entertaining.

Mr. LISHMAN. What percentage of the performances thus arranged by you in advance that came out in accordance with your expectations?

Mr. JURIST. I am just guessing wildly. Seventy percent.

The CHAIRMAN. What was that? Seventy percent of the performances were controlled?

Mr. JURIST. No. Came out the way we hoped they would.

Mr. LISHMAN. Due to the arrangements you made?

Mr. JURIST. Due to the controls that we exercised.

Mr. LISHMAN. I wish, Mr. Jurist, you would just explain in your own words how you would handle a typical performance, how you sat down with your associates and planned how the show would be run on a given evening, so that then we will have a clear picture as to just how these rather subtle controls were exercised.

Mr. JURIST. The evening show or the daily show? You know there were two shows.

Mr. LISHMAN. Let us take the evening show.

Mr. JURIST. The evening show we did not really sit down in committee so much because there were not that many people involved. The daily show we did. We sat down in the theater in committee and said, gee, I don't like her any more. Let us dump her. Gee, she is great. Tomorrow let us have a contest of 35 points and a 25 and try for a tie of 20 on the second one.

Then the artist would be there and I would say—I had established a pattern of recognition with him or them so that when I said 35 he knew that only the last five—in other words, it didn't matter whether the picture was 25, or 35 or 45. It was where that crucial or most prominent feature came in that would give the person the face, you see. That is about it. Let us have a tie there and there and so on.

Mr. LISHMAN. Who was the artist that participated in such meetings?

Mr. JURIST. There was a group of artists.

Mr. LISHMAN. Eric Leiber?

Mr. JURIST. Yes. Leiber was principally responsible. I have forgotten the other names.

Mr. LISHMAN. Didn't the amount of money that the contestant won depend on the amount of dots that were left remaining unconnected?

Mr. JURIST. Yes, as I recall.

Mr. LISHMAN. Was control of the budget one of the principal factors in determining how many of such dots would be left?

Mr. JURIST. No. Really the budget never concerned us particularly because we were always within the budget the way we were playing it.

Mr. LISHMAN. You were able to control the budget in another manner?

Mr. JURIST. It didn't matter. Like my bank account, I take money out when I need it and there always seems to be enough there.

Mr. GOODWIN. You were selecting the number of dots; you completely controlled the amount of money that would be won, didn't you?

Mr. JURIST. Perhaps. It so happened that there was enough money in the budget so that by playing the game the way we were playing it we never seemed to be in trouble with money. So that was not our purpose.

Our purpose was entertainment. The entertainment of a longer game and a shorter game and a tie and a continued tie and the mounting excitement. That is what we were really scheduling. We were scheduling the entertainment.

Mr. LISHMAN. Who was the advertising agency involved in "Dotto"?

Mr. JURIST. Ted Bates, Inc.

Mr. LISHMAN. Who was the sponsor?

Mr. JURIST. Colgate.

Mr. LISHMAN. Did you ever receive any suggestion either from the sponsor or from Ted Bates as to what contestants should be continued on a program?

Mr. JURIST. Not to my knowledge.

Mr. LISHMAN. How about Miss Hines?

Mr. JURIST. Yes.

Mr. LISHMAN. Didn't you at one time have a feeling that she should be left off the program?

Mr. JURIST. Yes. No. What happened was we felt that her information would not carry her any further; whereas, somebody, I don't know who it was—a client or the agency—felt that she was very desirable to have on the show. Very attractive, very vivacious and so forth and so on, and said it would be nice.

As I recall that, I remember giving testimony about that. I have to say very frankly that some of what I said were surmises. I was urged to try to continue her.

Mr. LISHMAN. Was it understood by either the advertising agency or the sponsor that you were exercising controls on the "Dotto" program?

Mr. JURIST. I don't know for a fact.

Mr. LISHMAN. Did Mr. Labatta have that understanding?

Mr. JURIST. I don't know for a fact. I can only say for them and the agency and the network and anybody else I would assume that they would know if they knew the business. But I can't point to a fact or a conversation I had with somebody where somebody admitted his knowledge of that.

Mr. LISHMAN. Was this system of controls a widespread practice in this business?

Mr. JURIST. I can only assume that. I will say this. I don't see how a show can be done without it and have any entertainment in it.

Mr. LISHMAN. In the interest of saving time, Mr. Chairman, I would like to suggest, if Mr. Jurist is willing, that he be given the opportunity of reading his testimony before the grand jury, and then appending a sworn statement to it, that he has read this testimony and that it is a true and correct transcript of the testimony he gave at that time.

The CHAIRMAN. You are asking that this witness be permitted to review the testimony before the grand jury?

Mr. LISHMAN. Given by him, so that he may attach to it a sworn statement that it is correct transcript of such testimony, that it may be treated as an independent statement of this witness before this committee.

In this way we would have in the subcommittee record the benefit of his more than 70 pages of testimony before the grand jury. Otherwise, if we were to go through here and attempt to question him closely in detail on these more than 70 pages of testimony, we would be here a considerable time.

The CHAIRMAN. Mr. Jurist, we had a young man who testified this morning that he appeared on your show, by the name of David Huschle. Do you recall one David Huschle?

Mr. JURIST. Yes, sir.

The CHAIRMAN. Mr. Huschle testified as to how his part of the show was controlled and the information that was given to him. The questions had been outlined. Are you familiar with that?

Mr. JURIST. With the information that was given to him?

The CHAIRMAN. Yes.

Mr. JURIST. Not directly, no. I have to explain that. With all the shows we had to do, five daily shows and one evening show, I had associates and in each case I delegated associates to work with the contestants. I directed the picking of them and the plotting of the show, which is the word we use, plotting of the show—again, an entertainment word.

Since I had this much to supervise I had associates who worked directly with the contestants. As I said before, their instructions were to use one of these various methods to be sure the contestants could answer.

The CHAIRMAN. Mr. Lishman, will you inquire of this witness, generally, the testimony that was given by Mr. David Huschle and see if he corroborates what Mr. Huschle said?

Mr. LISHMAN. Mr. Huschle testified this morning that he was taken into a room where he was rehearsed by Mr. Gil Cates and given the questions and answers in advance and also told how many points he should select. He was also told when to lose, and so forth. Are you familiar with that?

Mr. JURIST. He was given the questions and answers directly?

Mr. LISHMAN. Directly.

Mr. JURIST. Without any—

Mr. LISHMAN. Yes; without any—

As well as the name of the picture. He was told everything.

Mr. JURIST. All I can say about that is that it is about as clumsy as it could be.

Mr. LISHMAN. Would you say that his testimony to that effect was correct or not?

Mr. JURIST. I would not have firsthand knowledge of that.

Mr. LISHMAN. Mr. Cates would be the only man with that knowledge.

Mr. JURIST. Firsthand knowledge; yes. The responsibility I delegated was to employ one of these methods.

Mr. LISHMAN. This could have been a method that Mr. Cates employed on that occasion with Mr. Huschle.

Mr. JURIST. Apparently it was, if that is what he said.

Mr. LISHMAN. Similarly Mrs. Dubarry Hillman. Do you recollect her as a contestant?

Mr. JURIST. Yes.

Mr. LISHMAN. She gave similar testimony. In her case it was Mr. Green who gave her the information.

Mr. JURIST. Yes. He was on the daily show and Cates was on the nighttime show.

The CHAIRMAN. You do not have personal knowledge of that yourself?

Mr. JURIST. No.

The CHAIRMAN. Some one else talked to her?

Mr. JURIST. Yes.

The CHAIRMAN. Who would that have been?

Mr. JURIST. As Mr. Lishman just said, Mr. Green. I had two associate producers. Well, three actually, or four. Each with a different responsibility. Two of those associate producers were to handle the informational aspect of the show as it related to contestants.

The CHAIRMAN. Mr. Green was one of those?

Mr. JURIST. Cates was the other.

Mr. LISHMAN. Where are they; do you know?

Mr. JURIST. I presume in New York.

Mr. LISHMAN. Mr. Jurist, Mrs. Hillman testified that most of the time she was given the questions.

Mr. JURIST. Questions?

Mr. LISHMAN. Yes.

Mr. GOODWIN. She was asked the questions and they later turned upon the program.

Mr. JURIST. Yes; that is one of the methods.

Mr. GOODWIN. Is that a typical method?

Mr. JURIST. Not clever but that is one of the methods.

The CHAIRMAN. There was a comedian that appeared here this morning by the name of Hilgemeier.

Mr. JURIST. I know the name.

The CHAIRMAN. I assume that you did not have a direct contact with him as to his part in the show.

Mr. JURIST. He was not on the show but I did have extremely direct contact with him.

The CHAIRMAN. Before the show?

Mr. JURIST. No. Afterward.

The CHAIRMAN. After the show?

Mr. JURIST. Yes.

The CHAIRMAN. He testified about the \$1,500 that you participated in.

Mr. JURIST. Yes.

The CHAIRMAN. Was that true?

Mr. JURIST. The \$1,500—I didn't hear the word following.

The CHAIRMAN. The \$1,500 settlement.

Mr. JURIST. Yes. I did.

The CHAIRMAN. He testified that he had come to you or he talked to you about it and after the conversation that you made the proposition to settle with him for \$1,500 and that would be it.

Mr. JURIST. That is an unimportant version of the incident.

The CHAIRMAN. Would you give your version?

Mr. JURIST. He came to me after he stood by. That is, we always had one person standing by in case things did not work out the way we expected them to, so that there would be somebody to go on. He stood by and later in the day he came to see me. He had a piece of paper on which the answers of one of the contestants on the show were written. He not only had the paper, he had it photostated in four copies and had already been to a lawyer. With him he brought the young lady who had lost in that contest. I was very upset. Not for moral reasons, obviously but the clumsiness of this thing. He was quite obviously, I will put it bluntly and quickly because I know your time is short, trying to blackmail me. He said I only want what she gets. He repeated over and over again. I said what do

you mean? Only what she gets. She is not getting anything. What are you talking about? Naturally I was anxious to pacify him.

Furthermore, I had already found out by that time that he was not a bona fide contestant but a part-time bus boy and actor and had been on many shows. That was an absolute blanket prohibition on the show, never to use what we call professional contestants, people who go from show to show and pretend not to have been on other shows. Much time elapsed and finally a settlement was made with the girl who had lost the contest. It seemed to me she had been injured. A substantial amount of money was given her. I don't know how the figure was arrived at. I think it had something to do with what she could have won at that point or something like that, and it was something like \$4,000.

Then he said I want what she gets. Actually I was not in on this. I am only repeating what I heard because it was turned over to other people. I want what she got. We knew him for what he was, so we simply ignored him. Then finally he came and said he had told the Post reporter all about this and if he didn't get it—at which point, instead of punching him in the nose, we gave him \$1,500.

The CHAIRMAN. Is that considered hush money then?

Mr. JURIST. Yes.

The CHAIRMAN. And he accepted it?

Mr. JURIST. He took it. As they have said over and over again, blew the whistle.

The CHAIRMAN. He didn't hush?

Mr. JURIST. No.

The CHAIRMAN. He also testified that he was assured that he would appear on a subsequent show within a week or two and would win some prize money. Is that true?

Mr. JURIST. That is a lie. No one was ever promised anything on any show. Again for entertainment reasons. Because if you promised them something they would not be hoping, and if they were not hoping, they would not be interesting.

The CHAIRMAN. Did you tell him at any time, even after that, that he could come back on the show?

Mr. JURIST. Yes. I think I did say in an initial meeting—I don't remember, but at a later time—I was trying to pacify a man I considered to be extremely irresponsible. I said what is it you want? Do you want to go on the show? Fine. At the same time I was saying to myself I will jump off something before I ever put him on the show.

The CHAIRMAN. In other words, you made him believe you would put him back on the show?

Mr. JURIST. But I certainly never said to him, nor to anybody else at any time, go on the show, you will win money or X number of dollars.

The CHAIRMAN. And neither did you intend ever to put him back on the show even though you told him you would arrange it?

Mr. JURIST. That is correct. Particularly since by that time—I cannot remember the sequence exactly—I had discovered who he was. It was exactly the wrong kind of person, the kind of person we would not put on the show. Not because we didn't want them to win money twice but because people would recognize him and, therefore, the entertainment would not be as pleasing.

Mr. ROGERS. Mr. JURIST, you said you found out what a contestant did know in order to couch your questions in proper language and expect to get an effective answer. Did the moderator or interlocutor or master of ceremonies know about this?

Mr. JURIST. No, never. Again for the same reason: Because if he knew his performance would be uninteresting.

Mr. ROGERS. What worries me, suppose a contestant had gotten out of hand, you would also know by your previous categories in which he was without knowledge, wouldn't you?

Mr. JURIST. Yes.

Mr. ROGERS. So if he did begin to get out of pocket, did you have any method of permitting the master of ceremonies to take the question out of that category and give him something that he didn't know?

Mr. JURIST. Yes, sir.

Mr. ROGERS. In other words, what you did, you just had complete control of the situation?

Mr. JURIST. In every possible way.

Mr. ROGERS. About 98 percent?

Mr. JURIST. Ninety-eight is high.

Mr. ROGERS. But the chances were much in your favor that he would be able to answer a question or wouldn't be able to answer a question, as you decided you wanted him to do?

Mr. JURIST. Yes. May I add to that, everything was always in the contestant's favor. We never won anything.

Mr. ROGERS. I understand, but you were being paid. You were not paying for the show on the side?

Mr. JURIST. No. To me it is an important point, actually. That is, aside from the moral question that in essence we were not out to penalize anybody nor to take anything away from them. We were out to give them something. Everybody got something.

Mr. ROGERS. You mean by that, too, that you did not get any excess prize money if there was excess prize money?

Mr. JURIST. Yes. Even beyond that.

Mr. ROGERS. Did you do that? If you didn't use up the prize money would you have been entitled to it?

Mr. JURIST. I personally?

Mr. ROGERS. I mean your organization.

Mr. JURIST. Oh, no. That money belonged to the client.

Mr. ROGERS. To the sponsor of the program?

Mr. JURIST. Yes.

Mr. ROGERS. One other question: Did you consider these activities of yours in this regard immoral or dishonest or fraudulent?

Mr. JURIST. No, I don't, really. If you like I will explain why.

Mr. ROGERS. I wish you would. It has me disturbed quite a bit.

Mr. JURIST. Because here is what I think we did. I was just touching on this before, but I will enlarge on it now. We took some people who were bright and amusing people and we put them on a television show that millions of people watched. We gave them the biggest experience of their lives. If they were lucky they won a lot of money; if they were not so lucky they won a little money. They were not injured or maimed. All they had was a lot of fun and additional reward. I don't consider that immoral, particularly if you have grown up in the entertainment business as I have.

Mr. ROGERS. What about the viewing public? That is who I am talking about.

Mr. JURIST. Well, you know I said I didn't consider it immoral then. I don't say I don't consider it immoral now. I really don't know now. Naturally with this much questioning of the thing I am of course beginning to wonder. As far as the viewing public is concerned, I wish I had a dollar for every time, long before any of this ever was uncovered, that some viewer didn't say over and over again, and perhaps one of them is in this room right now, the whole thing is rigged. But they kept watching it.

Mr. ROGERS. Yes, that is true. Your testimony that you supplied, wouldn't that same test apply to a baseball or football game?

Mr. JURIST. Well, of course, you have one area that is not present in a television show, and that is betting.

Mr. ROGERS. What?

Mr. JURIST. Betting on a widespread scale.

Mr. ROGERS. Betting is out of it. I am talking about the contests. You have here a contest of witnesses that is advertised to the public as such and they are viewing it. There is a controversy as to whether this television belongs to the people or not. But that is beside the point. They are viewing it and they go and pay 25 cents or \$5 to see a baseball or football game and they are viewing that as a physical contest.

Mr. JURIST. You may have something there. I have always used the analogy on the other side of the fence. Dunninger—you know, the mind reader—creates and sells the illusion that he reads minds. He doesn't read minds. He performs a charade of a kind.

Mr. ROGERS. That is true. Actually people are aware of that fact, don't you think?

Mr. JURIST. No, they believe it. They may say how can he do it, but they believe it and they watch it.

Mr. ROGERS. Your position is that if a football game was fixed and people kept on seeing it you ought to let them go on seeing it?

Mr. JURIST. Let us go to the fight game.

Mr. ROGERS. That is the same thing. Basketball, baseball, boxing, everything.

Mr. JURIST. You have a point there.

Mr. ROGERS. I believe that is where I will stop.

The CHAIRMAN. In other words, this ceases to be a battle of wits or the knowledge of the contestants. It turns out to be a battle of skills of producers, doesn't it?

Mr. JURIST. Except you are leaving out one thing. When you find out what a person knows and then ask him questions based on what he knows you are exhibiting his knowledge, are you not?

The CHAIRMAN. Yes. Suppose he doesn't know it, then you help out just a little bit.

Mr. JURIST. It begins to sound very unsavory.

The CHAIRMAN. It is true?

Mr. JURIST. Yes. I mean in the ways I have indicated.

The CHAIRMAN. That is what I mean.

Mr. JURIST. Surely.

The CHAIRMAN. If he doesn't know the answers, then in the way you have explained here, as some one said a moment ago, you increase his knowledge a little bit.

Mr. Moss. Do you not think that perhaps there is even a more important impact? I have two small daughters. They were very ardent fans of these programs. Those youngsters now know that those were just as phony as they could be. This is a demonstration on the part of a very large American industry. You say it is shoddy. I say it is rotten, right down to the ground. I am not the person who likes to moralize a great deal, but you have created problems for every youngster who watched them and who had confidence in them. I think it is symptomatic of some far more basic problems in this whole industry with you people in a mad rush to develop something which is salable, which will draw a greater dollar, without any regard to a public obligation. I think it is one of the most demoralizing influences, as it is operated and as it is exposed, that we have present in this country today.

Mr. SPRINGER. Just one question, Mr. Jurist: Did you have charge of the program about which the previous witness testified?

Mr. GOODWIN. No, the previous witness was on "Tic-Tac-Dough."

Mr. SPRINGER. No questions.

Mr. FLYNT. You were with the \$64 Question and the Challenge?

Mr. JURIST. Just the Challenge.

Mr. FLYNT. Were you producing that program at the time a contestant by the name of Teddy Nadler was on it?

Mr. JURIST. I think he may have been on at that time.

Mr. FLYNT. He is reported to have quoted word for word from a portion of the encyclopedia on one occasion. I just wonder if you recall that, and if he was furnished with the exact page on which this recitation which he gave verbatim was on?

Mr. JURIST. I don't know. I only know from hearsay that he is certainly, or appeared to me from reports of those around me who did know him, one of the highly qualified people.

Mr. FLYNT. It is much more easy to control that contestant A shall beat contestant B, or vice versa, than to control a tie. It is much easier to control the thief than the tie?

Mr. JURIST. Yes.

Mr. FLYNT. You have to sharpen your wits and also sharpen the wits of the contestants to bring about a tie.

Mr. JURIST. Yes.

Mr. FLYNT. Is that particularly true when low point questions are used by both contestants?

Mr. JURIST. You are talking about "Dotto" now?

Mr. FLYNT. I am talking about any kind where points are given.

Mr. JURIST. Is it particularly true?

Mr. FLYNT. Let me give you an example. For example, by using low point questions, it takes a series of two, three or four different rounds to come anywhere near the required number of points where anybody would be willing to stand pat, as they would in blackjack. It becomes virtually impossible to produce a tie where low point questions are used unless both contestants are in on it, doesn't it?

Mr. JURIST. Look, for example you say to a contestant, "Naturally I can't give you the questions, but the first one is rough. That is all I can tell you." They take five points. I have not told them to take five points.

Mr. FLYNT. Last night you were not here, and also yesterday afternoon we were talking on a similar thing, that odds on three rounds

of two contestants runs over 100,000 to 1 that it would result in a tie, even if they got the correct answer every time. Yet here have been numerous instances of ties.

Mr. JURIST. It wasn't that hard on our show. You are talking about "Twenty-one." It was much easier on ours because we had the picture and the clues and they all helped create ties. We were out to make ties. That was the most exciting thing we had.

Mr. FLYNT. What I am getting at, it is much more difficult to produce a tie unless you have controls.

Mr. JURIST. Yes.

Mr. FLYNT. The fact of a tie is almost *prima facie* evidence of control.

Mr. JURIST. Yes, sir.

Mr. DEVINE. I am interested in these safeguards that you boys in the industry had to protect yourselves. I think we all recognize that you did take some calculated risk that some contestant was going to say that was one answer that was not given to me before the show. Did you take any safeguards or did you stand up against that risk not happening?

Mr. JURIST. We just had faith in human beings.

Mr. DEVINE. Everybody raises his hand to God and bless his heart. You didn't prepare your master of ceremonies or anyone else in case something like that occurred, how to handle it?

Mr. JURIST. It never happened.

Mr. DEVINE. I understand it has not.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Moss.

Mr. Moss. Mr. Jurist, you stated that your staff was instructed to ascertain however possible the extent of knowledge or the preparation of these contestants for a program. At no point in these programs was it ever determined to have a completely uninstructed performance, was it?

Mr. JURIST. You are talking about "Dotto"?

Mr. Moss. I am talking about the show that you had association with, which I believe was "Dotto."

Mr. JURIST. Yes. I think there probably were occasions like that, of no controls at all.

Mr. Moss. From the very beginning, the format in production required that controls be tightly imposed?

Mr. JURIST. I would say it was a premise of this entertainment.

Mr. Moss. Wasn't it more specific than that? Wasn't it a definite understanding and instruction to the entire production staff that there were to be tightly maintained controls over contestants?

Mr. JURIST. Let me reply to you this way. Actually there was never any lecture or code or point by point maneuver laid down. I assumed that when my associates came to me from other shows that they knew that the show had to be controlled, and that it would be their responsibility.

Mr. Moss. By control, you mean that they had to take contestants who had certain minimum capabilities, they had to ascertain what those capabilities were, they had to give them a general idea by whatever method was most effective of the content of the program in which they would participate?

Mr. JURIST. The other way around. The content of the program might be based on what we find out about them.

Mr. Moss. That would be one way of informing them. If you questioned them at length and then drafted the script to meet their capability that was one way of determining definitely, or you might proceed in another way. You might question them at length in an area where perhaps they had no great competence, and through an exchange of information when they answered incorrectly see that they were properly coached to undertake their performance and to fulfill their roles in the show because it is entirely a staged production, isn't it?

Mr. JURIST. We thought of them as performers.

Mr. Moss. Entirely as a performance and never as a real contest?

Mr. JURIST. Yes.

Mr. Moss. Your instructions to your staff were not to avoid this but rather to do it.

Mr. JURIST. Yes. As I say, there were no formal instructions. This was the premise of our work.

Mr. Moss. You mean that the practice is so widespread and so much a part of the pattern of production of this type of show that it is unnecessary to give even a new member of your staff instructions as to the methods used in preparing the contestants for the role in the show?

Mr. JURIST. Certainly as far as understanding that controls are a premise of this kind of show; yes. In other words, when I use the word "premise," that it didn't need to be laid out. It was the thing you began with. It was the point from which you went on.

Mr. Moss. This understanding was not very general in your staff or with your associates. You could have a bad crossup, couldn't you?

Mr. JURIST. Yes. It would be shambles.

Mr. Moss. Did you exercise such tight controls to insure that you could exploit these characters to the full limits of their capabilities? You didn't neglect to have a control of some sort on instructions or in staff conferences?

Mr. JURIST. A control of some sort on staff conferences?

Mr. Moss. To insure that the production was completely of the type you desired?

Mr. JURIST. Yes. All the controls we have talked about here today.

Mr. Moss. I know. We don't have them just arise automatically. There must be some communication.

Mr. JURIST. Yes; we had conferences.

Mr. Moss. In these conferences then these matters were very candidly discussed.

Mr. JURIST. Yes. It was an accepted fact that we had to control the show.

Mr. Moss. So the fact that a contestant might arrive at a feeling that the show was fixed was in no way surprising to anyone on your staff?

Mr. JURIST. Eventually it turned out that way.

Mr. Moss. Did you feel that the format of the production could be advising?

Mr. JURIST. Yes.

Mr. Moss. You mean that the subtleties of the preparation creeping to the contestants was surprising?

Mr. JURIST. Yes; it could be. I daresay it often was.

Mr. MOSS. Did you have excellent advice from psychiatrists or psychologists as to the best procedures to use in this process of indoctrination?

Mr. JURIST. No.

Mr. MOSS. Who developed the technique?

Mr. JURIST. I don't know who developed them.

Mr. MOSS. How did you learn them?

Mr. JURIST. The basic and primary step I learned when I was doing all of the quiz shows that I have mentioned here. That step is to find out what the contestant knew. Let me add something that I know I testified to before the grand jury which is very relevant here. I am a fairly well educated person. In addition to that, I have been dealing with information, facts and bits of information for a long time with the shows. If you make up a list of 10 questions right now, I will give you a thousand dollars to one that I can't answer more than two of them, because the world of information is enormous. It is simply enormous. You cannot ask random questions of people and have a show. You simply have failure, failure, failure, and that does not make entertainment.

Mr. MOSS. Do you think that this general fact was known by the owners of a show?

Mr. JURIST. I have no firsthand knowledge of that, sir.

Mr. MOSS. But it was very generally known in the industry, the field of production of shows.

Mr. JURIST. Known in the industry among people who did these shows.

Mr. MOSS. Yes.

Mr. JURIST. I would certainly guess so.

Mr. MOSS. The production staffs.

Mr. JURIST. I would certainly guess so. I have no firsthand knowledge of any shows except the ones I worked on.

Mr. MOSS. Let us say you cannot demonstrate by your firsthand knowledge, but you had such implicit faith that this was generally known that you did not feel it necessary to communicate directly to your staff the fact as to the procedures which would be employed.

Mr. JURIST. Yes. We used a kind of shorthand. If I had a new man, I would say you have worked with contestants, haven't you? He would say yes, I have. You understand it is important to know what their areas are, what their strengths and weaknesses are. He said sure I do. If he knows that, I presume he knows the following steps.

Mr. MOSS. You never got one from another show that he was so honest that he was not familiar with the techniques.

Mr. JURIST. Yes, but he didn't stay long.

Mr. MOSS. Do you feel that the personnel of the networks who were in constant contact with the producers had any knowledge of the format of the production?

Mr. JURIST. I have no firsthand knowledge of that.

Mr. MOSS. What kind of contact did they have with the show?

Mr. JURIST. The networks have very little, except technical contact.

Mr. MOSS. They own quite a few productions. Don't they have producing organizations of their own?

Mr. JURIST. Yes. Those shows they know about. Those that they don't, they don't know too much about.

Mr. MOSS. Do you think the format on the shows which they control and produce themselves is different than the procedures on the show you were responsible for?

Mr. JURIST. The fact of the matter is that no network owned a quiz show. No quiz show was packaged by a network that I know of.

Mr. MOSS. NBC purchased "Twenty-one."

Mr. JURIST. They purchased it after it was packaged. They absorbed the assets of the whole corporation. But that is not the same as producing it.

Mr. MOSS. At one point they relieved the producer and took it over as a network production.

Mr. JURIST. That is when the scandal broke out.

Mr. MOSS. Then they had to continue to have knowledge throughout the period of production under their direction.

Mr. JURIST. Your guess is as good as mine.

Mr. MOSS. Who was the producer of "\$64,000 Challenge" when you were with it?

Mr. JURIST. I was. Who was the packager? Entertainment Packages, Inc.

Mr. MOSS. Who owns it?

Mr. JURIST. There are some stockholders, I presume. A man by the name of Harry Fleischman is the president, I think, of that corporation.

Mr. MOSS. At the time you were at the show, it was not owned by Mr. Cowan?

Mr. JURIST. No.

Mr. MOSS. Had the format employed there been in any way different from the format on other shows where you acted as producer? I am talking of procedures in dealing with contestants.

Mr. JURIST. Was it different than on other shows? Yes. Only because, as I said early in this hearing, these people were highly qualified experts. Therefore it was not necessary to do anything more than take the first step which is to find their areas of information.

Mr. MOSS. Is this a continuing procedure while the contestant is on the show? He is reinterviewed and reinterviewed in order to have continuing knowledge of his limits?

Mr. JURIST. It would vary, sir.

Mr. MOSS. Usually.

Mr. JURIST. I would say it would vary. You could talk to one person and you could see in a moment that this person had this field covered eight ways, you know. That would be all you would have to do.

Mr. MOSS. Mr. Jurist, I think you indicated that you have acquired a great deal of knowledge as a result of working with the quiz programs for a period of many years.

Mr. JURIST. Some knowledge.

Mr. MOSS. Yet you were willing to lay a thousand dollar bill on the table and bet me that if I asked 10 questions you would answer only 2.

Mr. JURIST. Yes.

Mr. MOSS. Have you ever met any associates in these quiz programs that were able to do any better unless there was a discussion of their

area of knowledge so you knew what you were dealing with when the questions were prepared for the show?

Mr. JURIST. In the one case I was talking about general knowledge. In the other case I was talking about a specific field, totally different problems. General knowledge is vast and unending. That is where I would fail. However, if you give me a week I will come back with a lot of stuff memorized about Napoleon and then go. It is much easier.

Mr. Moss. Indefinitely? 10 weeks? 15 weeks? Wouldn't you have to have a refresher?

Mr. JURIST. Yes. You take Napoleon. What can you ask about him?

Mr. Moss. Almost anything.

Mr. JURIST. Not too much. Not compared with general knowledge. That is all I am saying. Of course, it is a lot of stuff but it is very restricted.

Mr. Moss. Generally a very prudent policy of knowing well the capability of the contestant?

Mr. JURIST. I am sorry, I didn't follow you?

Mr. Moss. Generally you took care to know well the capabilities of the contestants with whom you were dealing?

Mr. JURIST. Yes, I would say that was primary.

Mr. Moss. And that was true of all shows?

Mr. JURIST. I would say so. I know it was true of all the shows I was on, and I assume it was true of other shows.

Mr. Moss. You indicated that 70 percent of the total shows were controlled successfully. Were those usually the ones involving the larger winnings rather than just the beginners? You get a couple of new contestants on a show. Where does the 30 percent fall? In the smaller winner class?

Mr. JURIST. I don't know how to answer that.

Mr. Moss. Let us say when you had a lot of prize money on the table, was that usually a pretty closely controlled show?

Mr. JURIST. On the daily show money was never a problem. It really was not a problem. We had enough to play with so that just by going on from day to day we never had any problem. We never had the problem of saying, "Oh, my God, we are 2,000 over, we have to do something about it." We just never had that problem.

Mr. Moss. Then we have three contestants on your show who appeared before us today. They testified that they received questions, answers, and the specific points they were to request. Did you have knowledge of that procedure, this more specific?

Mr. JURIST. I do now.

Mr. Moss. And less subtle. Did you at the time?

Mr. JURIST. No. I didn't. When I learned it——

Mr. Moss. Had you known it, would you have taken steps to have prevented it or would you have permitted it?

Mr. JURIST. No, I would have taken steps to see that it was not done so obviously.

Mr. SPRINGER. How long were you associated with the "\$64,000 Challenge"?

Mr. JURIST. I think about 9 or 10 weeks.

Mr. SPRINGER. Is it true that on that program, as well as in "Dotto," the contestants received questions and answers?

Mr. JURIST. Not to my knowledge.

Mr. SPRINGER. Would you have been in charge of that part?

Mr. JURIST. No, I wasn't.

Mr. MOSS. Could you effectively control a show without dealing equally with both contestants as to subtle indoctrination?

Mr. JURIST. Of one and not the other?

Mr. MOSS. Of one only, rather than both.

Mr. JURIST. Yes.

Mr. MOSS. You could control it with just one contestant?

Mr. JURIST. Yes.

Mr. MOSS. But it would be impossible to control without at least one contestant.

Mr. JURIST. That is right.

Mr. MOSS. I noticed that in many of the quiz shows, and I am trying to recall on "Dotto," was it represented that the questions were authenticated by some organization such as the Encyclopedia Americana?

Mr. JURIST. Yes.

Mr. MOSS. Were they, in fact?

Mr. JURIST. For a while, yes.

Mr. MOSS. How was that arranged?

Mr. JURIST. What they did was to check us. In other words, in the beginning they said, all right, call us every day and tell us what your questions and answers are, and we will check them. So they would and we would call back and they would say they are fine. Maybe there was one instance of a question, or something like that. When they found that we were actually in fact as expert as they were in terms of accuracy, then they didn't bother to go through the formality.

Mr. MOSS. They permitted you to continue to represent the questions to be authenticated when in fact they were not?

Mr. JURIST. Yes.

Mr. MOSS. That is all of my questions, Mr. Chairman.

Mr. DEROUNIAN. Mr. Jurist, were you connected with the "Quiz Kids" show?

Mr. JURIST. Yes.

Mr. DEROUNIAN. How about "Giant Step"?

Mr. JURIST. That was also a Giant show.

Mr. DEROUNIAN. Did you use the same format with these children as you did with "Dotto"?

Mr. JURIST. No. Again you had children that were terribly erudite. Also kids are so much closer to information than adults. They are going through the acquiring of information. We are forgetting it. You had to find out what they knew.

Mr. DEROUNIAN. Did you give them any assistance?

Mr. JURIST. Well, we might have suggested a field of study or an area.

Mr. GOODWIN. May I ask, isn't it true during the "Quiz Kids" show people were sent out to talk to the young children who were contestants to find out what areas they were strong in so they could be asked about that on the show?

Mr. JURIST. Of course. That is what I said.

The CHAIRMAN. You certainly have a bright one in that little Joey.

Mr. JURIST. That is a long time ago.

Mr. LISHMAN. Mr. Chairman, there are some questions that I have which won't take very long. How many questions were on the card that was held by the master of ceremonies?

Mr. JURIST. Four.

Mr. LISHMAN. Did the public know that there was a fourth question on that card?

Mr. JURIST. No.

Mr. LISHMAN. What was the purpose of the fourth question on the card?

Mr. JURIST. To balance the contest. There would be a question which would be a difficult question.

Mr. LISHMAN. Was that fourth question known as the "kicker" or the "killer"?

Mr. JURIST. Yes, and other names, too.

Mr. LISHMAN. When you decided that a contestant should be dumped from the program, did you use the kicker?

Mr. JURIST. No, that was not what it was used for. That is a simple matter. We didn't have to use that. We just picked a question we thought he couldn't answer.

Mr. LISHMAN. How would the master of ceremonies know when to use the kicker question?

Mr. JURIST. We would signal him.

Mr. LISHMAN. How would you signal him?

Mr. JURIST. I believe it was touching the hair.

Mr. LISHMAN. When he did that, then he was to ask the kicker?

Mr. JURIST. Yes. If he saw it.

Mr. LISHMAN. Was it the intent by the use of the kicker that would put an end to that contestant?

Mr. JURIST. No. That was another way of arranging a tie.

Mr. LISHMAN. It was another way of arriving at a tie?

Mr. JURIST. Yes.

Mr. LISHMAN. That is still another form of control in this arrangement.

Mr. JURIST. Yes, that is right.

Mr. LISHMAN. Mr. Jurist, you said that budget control didn't enter into this situation at all, is that correct?

Mr. JURIST. Yes, on the day show.

Mr. LISHMAN. Isn't it a fact that the vice president of Colgate, the sponsor, came to you and made certain statements to you about the budget?

Mr. JURIST. That was on the nighttime show. It was more of a joking reference than anything else.

Mr. LISHMAN. Well, we will find out. I will show you this to refresh your recollection before reading it.

Mr. JURIST. "He was angry, not serious." What does that mean?

Mr. LISHMAN. Don't ask me.

Mr. JURIST. Do you want to read down to this statement?

Mr. LISHMAN. I don't want to read anything. I want you to refresh your recollection when you said he was not serious.

Mr. JURIST. Yes. I think the testimony there indicates that I was not ordered to do anything. I only had a reaction from him.

Mr. LISHMAN. I will paraphrase what appears here. Did Mr. George Laboda of the Colgate Palmolive Co. indicate to you that you

should proceed very cautiously before you exhausted the money in the budget?

Mr. JURIST. He didn't use those words. I will tell you what he did say.

Mr. LISHMAN. I will read your testimony before the grand jury, then.

Mr. JURIST. Fine.

Mr. LISHMAN (reading):

Mr. Jurist, did George Laboda of the Colgate Palmolive Co. ever make any statements to you concerning the budget?

Yes.

Did he ever indicate to you you were to proceed very cautiously before you exhausted all the money in the budget?

Yes; but after the first show, I think it was the first show, when someone had won \$11,000.

This was the nighttime show?

Nighttime show. He came into the studio and said, "Well, who is your new sponsor?"

Did he seem to be serious about it?

He was angry, not serious.

Did he indicate to you that he wanted you to be a little more cautious?

No. That was all he said.

That was all he said. How much was won on the next show?

Less.

Is that correct?

Mr. JURIST. Yes. The only exception I would take to that is not to my statement but to the question that was asked. It was not my words. Didn't he come to you, et cetera, to which I replied yes, is not my phraseology. It was a pique, annoyance, half-joking, but it was not a dictum. He did not say, "Jurist, watch out or you are through." He was wondering what was going to happen if we gave away that much money in that night. What was going to happen to the budget. It was not an order. I am only saying this to clarify what you are driving at. They didn't order us. Their concerns were in other areas entirely. To do with the commercials, with the way the show was mounted, and the placement of the commercial and credits and so forth. I don't mean they never had a reaction to anything else. Substantially, if you are trying to make out a case that they ruled or controlled all aspects of the show, it is not true.

Mr. LISHMAN. Did anyone connected with the Ted Bates Agency have knowledge of the fact that controls were exercised on "Dotto" in determining which contestants should remain on for long periods of time?

Mr. JURIST. There might be an exception, but I would say no to that.

Mr. LISHMAN. I would like again to show you the testimony you gave to the grand jury.

Mr. JURIST. OK.

(Document shown to witness.)

Mr. JURIST. As you see that is substantially what I just said. I said one instance; there were several. In substance they did not direct the content of the show.

Mr. LISHMAN. Isn't it a fact that the basis of all of the controls here were to ascertain as precisely as you could in advance what specific knowledge the contestant had on a particular subject and then

ask him only those questions which in your mind you had a reasonable certainty he could answer?

Mr. JURIST. Exactly.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Mr. Jurist, do you have a plane back to California this afternoon?

Mr. JURIST. Yes.

The CHAIRMAN. What time?

Mr. JURIST. Seven o'clock. However, I can take a later one.

The CHAIRMAN. I am going to instruct Mr. Howze, who has worked on this, and Mr. Coleman, to go with you and complete the statement that was referred to for the record, and when that is completed, then we will again assemble the committee and take that statement in committee as your statement, as a supplemental statement to the one you have already given. We have to go over to the public hearing at this time to get to the rest of the witnesses that we were to get to today. I suppose the better thing to do is to go to the office where you have people to work with and facilities, and let me know as soon as you have completed.

(Thereupon at 3:55 p.m., the committee proceeded to open session.)

Afternoon public session held in the caucus room, old House Office Building, Hon. Oren Harris (chairman) presiding, a quorum being present.

The CHAIRMAN. The committee will come to order.

For the information of those who are here, the committee has been in executive session in which we have heard Mr. Edward Jurist, producer of "Dotto" show and also a part-time producer, or at least worked part of the time on the production of the "\$64,000 Challenge." Mr. Jurist came here requesting that he be heard in executive session because some of his testimony, he contends, would tend to defame, degrade, or incriminate some one or more persons. The committee felt after investigating that Mr. Jurist's request was reasonable, and therefore we have heard him rather extensively in executive session. The committee will determine, as soon as it gets an opportunity, what part of his testimony, if any, will be made public. I suspect a substantial part, if not most of it, will be made public.

We have also heard in executive session under the same conditions the request of one Mr. Martin Dowd, who was a contestant in the "Tic-Tac-Dough" show. Similarly, the committee will decide, as soon as it has an opportunity, what part of that testimony will be made public.

Yesterday morning the Chair received a wire signed by one Charles Van Doren. Among other things it advised that he is available to the committee. I might say that previously to these hearings staff members conferred with Mr. Van Doren and Mr. Van Doren was given personally an invitation to appear and testify before this committee. Notwithstanding his wire, in which he requested that a certain statement of his in this fashion be included in the record, which the committee feels would not be the most appropriate way to make a complete record, the committee wired Mr. Van Doren yesterday—last night—acknowledging the wire, advised that the committee would be glad to comply with his request to appear and testify and respectfully invites him to appear before the committee either Thursday afternoon,

October 8, which is this afternoon, or Friday morning, October 9. It requested him to advise the time that we may expect him.

I might say it is well understood that the committee conducting these hearings has scheduled hearings for only this week. Any further hearings will have to be scheduled at such time as the committee may be ready. Consequently, tomorrow is the last day.

In view of the fact that Mr. Van Doren sought in this method to get into the record, and in doing so that he was available to the committee, the committee felt that it was only fair to give him an opportunity to either come this afternoon or tomorrow at his convenience.

I must say that this is late in the afternoon and we have been expecting some reply, in view of the fact that he initiated the matter himself. We have not received any reply and consequently we are not at this time advised whether he will, as he suggested himself, make himself available.

Mr. DEROUNIAN. Mr. Chairman, may I make a statement on that point. The National Broadcasting Co. is either Mr. Van Doren's employer or has a contractual relationship with him. I would hope that this great network, which has sought to cooperate in this proceeding, will see to it that Mr. Van Doren is here tomorrow. I say that because I believe that the facts ought to be brought out to the American people, the National Broadcasting Co., and this subcommittee. I think this should be done in fairness to Mr. Van Doren also.

The CHAIRMAN. At this time we will ask Miss Kirsten Falke to come around. I likewise would invite, if she desires, her mother, Mrs. Harry Kitzing, if you desire, to sit with your daughter.

Miss Falke, will you be sworn? Do you solemnly swear the testimony you give to this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Miss FALKE. Yes, sir.

TESTIMONY OF KIRSTEN FALKE

The CHAIRMAN. Give your full name to the committee, please.

Miss FALKE. Kirsten Falke.

The CHAIRMAN. What is your address?

Miss FALKE. 858 Third Avenue, New York City.

The CHAIRMAN. How old are you?

Miss FALKE. Nineteen.

The CHAIRMAN. Are you a student?

Miss FALKE. Yes, I am, sir.

The CHAIRMAN. What school do you attend?

Miss FALKE. The Oberlin Conservatory of Music, at Oberlin, Ohio.

The CHAIRMAN. You are anxious to get back to your school?

Miss FALKE. I sure am.

The CHAIRMAN. Consequently, it is most important that you be permitted to go back home today.

Miss FALKE. Yes, sir.

The CHAIRMAN. You are here as a voluntary witness?

Miss FALKE. Yes, sir.

The CHAIRMAN. Were you a contestant on the quiz show "Tic-Tac-Dough"?

Miss FALKE. Yes, I was.

The CHAIRMAN. Do you recall when?

Miss FALKE. It was December 26 and 27 of 1956.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Miss Falke, how old were you at that time?

Miss FALKE. I was 16.

Mr. LISHMAN. How did you come to be a contestant on "Tic-Tac-Dough"?

Miss FALKE. In answer to more or less an audition for a folk singer.

Mr. LISHMAN. Did you make an application to be a contestant on this program?

Miss FALKE. No. I was notified that there were some TV shows or a TV show that was looking for someone who could sing folksongs, and I went.

Mr. LISHMAN. You went to the offices? Where did you go?

Miss FALKE. I don't know. I believe it was an office on Madison Avenue. I don't know the exact place.

Mr. LISHMAN. Who did you audition for?

Miss FALKE. I remember singing in the office of Mr. Dan Enright.

Mr. LISHMAN. Mr. Enright?

Miss FALKE. Yes.

Mr. LISHMAN. Did you have a conversation with Mr. Enright about going on the program "Tic-Tac-Dough"?

Miss FALKE. Yes, I did.

Mr. LISHMAN. Do you remember what was said?

Miss FALKE. Not all of it. I do remember that the general plan was that I would go on the program and it was mentioned that if I happened to do well that possibly—my sister sang also—it might even work out that she could come on the program and sing a duet with me.

Mr. LISHMAN. Were you later asked to see a Mr. Howard Fisher?

Miss FALKE. Yes, I was.

Mr. LISHMAN. Who was Mr. Fisher?

Miss FALKE. I don't quite know his exact position or status. All I know is that he was the person with whom I did most of my business.

Mr. LISHMAN. What was your first conversation? Do you remember your first conversation with Mr. Fisher?

Miss FALKE. No; I don't remember it at all.

Mr. LISHMAN. How many days before you went on the show did you see Mr. Fisher?

Miss FALKE. I would say about 4 days in the mornings.

Mr. LISHMAN. Did he notify you that you would be accepted as a contestant on the show?

Miss FALKE. Yes.

Mr. LISHMAN. Did he give you a card catalog to look at?

Miss FALKE. Yes, he did give me a card catalog. That brings back a couple of memories. In the offices after I had been introduced to Mr. Dan Enright, I was taken into some smaller offices. As I walked in I noticed a tall redheaded gentleman going through some cards. I was given a card file similar to that with several categories in it. My next few mornings were spent going through the card catalog.

Mr. LISHMAN. Did those cards have questions and answers on them?

Miss FALKE. Yes, they did.

Mr. LISHMAN. Do you remember how many questions each card had on it?

Miss FALKE. Each card?

Mr. LISHMAN. Yes.

Miss FALKE. I believe each card had one. I am not sure, though.

Mr. LISHMAN. Each card had one question?

Miss FALKE. Yes.

Mr. LISHMAN. Were the answers also on these cards?

Miss FALKE. The question was on under the category heading and the answer was also on the card.

Mr. LISHMAN. Were these the same questions and answers which were given later in the program by you?

Miss FALKE. I was told when I went through all these cards that these particular questions, all of the card files full of them, were the ones that were chosen to be presented as questions on the show. I was not told at that time exactly which questions would be asked.

Mr. LISHMAN. When you went there, did you think that the show was an honest contest?

Miss FALKE. I had actually not even thought about that aspect of it.

Mr. LISHMAN. Did Mr. Fisher tell you how long you would be able to stay on the program?

Miss FALKE. The final plan was that I would be on there approximately 2 days, maybe more. At any rate, I would tie twice with Tim Horan and finally beat him. At that point the interest would be enough that I could possibly bring my sister on to the show also.

Mr. LISHMAN. Each day that you appeared on the program, in advance of appearing, you were given these cards with the questions and answers which were later asked?

Miss FALKE. Could you state that again, please?

Mr. LISHMAN. You appeared more than once on the program?

Miss FALKE. Twice.

Mr. LISHMAN. On the first day you were given the questions and answers in advance of your appearance on the show itself, is that correct?

Miss FALKE. No. If you mean I was given the questions that were asked on that particular show—given the exact questions that were being asked on that show—I was not. I was given lots of questions to go through. They perhaps chose their questions from those.

Mr. LISHMAN. But among those questions that you were shown were the questions that were asked you when you went on the show, is that correct?

Miss FALKE. Yes.

Mr. LISHMAN. When Mr. Fisher handed you these cards, what did he tell you to do?

Miss FALKE. I was told to just memorize them as best I could because the questions that would be asked of me were included in these card files. I wrote as many down as I could remember, which were quite a few, and took them home and studied them, faithfully.

Mr. LISHMAN. Was each and every question that you were asked on the air a question that you had previously read from the cards you have just mentioned?

Miss FALKE. I think so.

Mr. LISHMAN. Were you ever told to lose?

Miss FALKE. No.

Mr. LISHMAN. Did Mr. Fisher tell you what categories to choose?

MISS FALKE. Not the first day. The second day I was told just before the show to choose two categories, boxing and President Eisenhower. I don't remember the order. He said, "You remember the questions." The morning before that or the day before that he had gotten much more specific about the questions. In other words, he narrowed the area down that the questions would be chosen from. Then that morning before the show he said, "Do you remember the questions about boxing and Eisenhower"? and I said I did. I was not too sure of them. But I thought I would probably recall them once the questions were asked of me. I was to choose boxing and Eisenhower in a particular order. There was some kind—I believe this was to have me tie with Tim Horan.

MR. LISHMAN. To tie with somebody?

MISS FALKE. To tie with the contestant.

MR. LISHMAN. Were you told that you were going to tie with the contestant?

MISS FALKE. Yes. The idea was that I was to tie with him for 2 days and then beat him.

MR. LISHMAN. Did you tie with him as Mr. Felsher told you?

MISS FALKE. I tied him the first time. The second time I went through the questions in the wrong order and botched everything up. I defeated him.

MR. LISHMAN. In other words, you defeated your opponent by accident?

MISS FALKE. I did.

MR. LISHMAN. What did Mr. Felsher have to say about it?

MISS FALKE. Immediately after that there was a station break and Mr. Felsher came rushing across the stage, pulling his hair out, and he said, do you realize what you have done? I said "Yes." I didn't, really, but there was not much else I could say.

He was trying to console me and scold me and do everything at the same time. He was still in the rush of the time that was allowed for the commercial and he would shoot off the stage and I went on to be defeated by the next contestant.

MR. LISHMAN. Were you supposed to be defeated by the next contestant?

MISS FALKE. Well, I will tell you. They had not given me the questions for the next contestant.

MR. LISHMAN. After the show was over, in which you had in his view, botched up, and won, did Mr. Felsher say anything further to you?

MISS FALKE. Yes. He came over to me afterwards and I was rather petrified because I remember before the show I had said to him, pertaining to questions being given to the contestant, has anyone ever goofed before?

He said "No." I said, "Well, I have a feeling I am going to." He said, "Oh no, you won't." You know, so in a way I did.

Afterward when he came over to me he was very fatherly in a very stern kind of way and said it was OK and I should not worry about it. I said, "haven't a lot of careers been ruined and everything"? He said, "Yes, but don't worry about it."

MR. LISHMAN. Did Mr. Felsher tell you never to tell your family or friends that you had been given this assistance?

MISS FALKE. Yes, sir; he certainly did. I was not to tell anyone, not even my mother or my boyfriend or anything.

MR. LISHMAN. Therefore, you did not tell your mother for some time, is that correct?

MISS FALKE. I did not tell my mother until after the scandal broke in the newspapers which is quite some time now.

MR. LISHMAN. Can you tell us what you did then?

MISS FALKE. I told her directly that I had received answers and questions. Up until that time whenever anyone questioned me I misled them or I joked around or said that I was. My kidding manner made them assume that it wasn't.

MR. LISHMAN. When the grand jury investigation started, did Mr. Felsher try to stop you from telling the truth before the grand jury?

MISS FALKE. His words were to tell the truth, but he knew what the truth was and I knew what the truth was and there was some confusion there, although I am sure he did not want me to tell. He did get in touch with me ahead of time.

MR. LISHMAN. Would he say something to you like this: "Now, Miss Falke, you tell the truth that you were given no assistance on these programs"?

MISS FALKE. That is about it.

MR. LISHMAN. Is that the kind of language that he would use with you?

MISS FALKE. I believe that is almost word for word what he said.

MR. LISHMAN. Did Mr. Felsher call you on more than one occasion about this?

MISS FALKE. Yes. He called me first where I was working and told me that I was probably going to be contacted by the district attorney's office and that they would be kind of mean to me but not to really be scared and just stick to my guns and tell them the truth, that I didn't get any answers.

MR. LISHMAN. Did men from the district attorney's office come to your home and ask that they might put a device on your telephone so that they could hear Mr. Felsher when he was talking to you?

MISS FALKE. They did not come to my home. This was decided ahead of time. My mother's permission was gotten and they did come out.

MR. LISHMAN. They did?

MISS FALKE. Yes.

MR. LISHMAN. What did Mr. Felsher say when everyone was listening in on the conversation with you?

MISS FALKE. He said a lot of things. There is one definite thing he said in the maze of confusion and words. If you have it there, I would appreciate it if I could be refreshed.

(Document was handed to the witness.)

MISS FALKE. At that time he told me, as I said before, in a mass of confusion—he let it slip—I said, "What should I tell them. Shall I tell them the truth". He said, "Yes, tell them the truth." I said that I did accept answers. It went so quickly it is very hard to answer. "Should I tell them the truth, that I did accept answers"? He said, "Yes—I mean no. Don't tell them that." It was something to that effect.

MR. LISHMAN. That was overheard by others than yourself?

MISS FALKE. It certainly was.

Mr. LISHMAN. Did Mr. Felsher ask you to get in touch with a lawyer whom he named?

Miss FALKE. Yes. I believe his lawyer's name was Sol——

Mr. LISHMAN. Sol Gelb?

Miss FALKE. Sol Gelman or Gelb. It sounds familiar.

Mr. LISHMAN. Did you ever go to that lawyer's office?

Miss FALKE. No, I didn't. I stayed away.

Mr. LISHMAN. That is all the questions I have of this witness.

Mr. ROGERS. How much did you win on this program?

Miss FALKE. I won \$800.

Mr. ROGERS. How many times were you on there?

Miss FALKE. I was on the show for 2 days.

Mr. ROGERS. How long was it after you knew you were going to be on the show before you knew it was a questionable procedure? That it was not on the up-and-up as you thought it was.

Miss FALKE. Well, when they told me I passed the test with flying colors. I knew something was wrong somewhere. Actually, the minute I walked into the office and saw this fellow going through the cards is when I was confronted with cards.

Mr. ROGERS. Did you think as this developed that it was a sort of misrepresentation or a fraud being practiced on the American public?

Miss FALKE. No, I didn't think of it exactly in those terms. At the time I was 16 and the overall excitement of it appealed to me more than anything else, I believe.

Mr. ROGERS. Were you somewhat disillusioned when you found out it was not exactly a battle of wits but it was a fixed or rigged show?

Miss FALKE. No. I never paid much attention to quiz shows along the line. I looked at it more or less as an opportunity to sing rather than anything else because this was the position that had been presented for me.

Mr. ROGERS. Did your conscience hurt you about this afterward and before you told your mother?

Miss FALKE. I did think of it quite often and wonder whether I should be telling my mother. I won't say my conscience hurt me although I was kind of bothered about it.

Mr. ROGERS. Did you lose any sleep about it?

Miss FALKE. No.

Mr. ROGERS. How do you feel about it now, Miss Falke?

Miss FALKE. Well, I am here doing what I can to clear it up.

Mr. ROGERS. You do think it was at least a questionable practice if not fraudulent and corrupt, do you not?

Miss FALKE. Yes.

Mr. ROGERS. That is all.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Moss.

Mr. Moss. Miss Falke, I understand at the time you appeared on this show you were 16 years of age.

Miss FALKE. Yes.

Mr. Moss. And you were given inducements beyond just the appearance. If you did well perhaps there would be an opportunity for your sister?

Miss FALKE. Yes.

Mr. Moss. To appear with you?

Miss FALKE. Yes. If not against me.

Mr. Moss. If not against you?

Miss FALKE. Yes.

Mr. Moss. Then subsequently, when the matter appeared to be on the verge of becoming public, the producer contacted you and did his best to encourage you not to truthfully respond to the inquiries of the district attorney or of the grand jury?

Miss FALKE. Yes, sir; that is right.

Mr. Moss. Mr. Chairman, I think this is one thing that we should be very conscious of.

I made a statement earlier in the executive session.

Here we have a 16-year-old youngster going in to demonstrate fully the ethics of these people. We have seen some rather sordid stories in the last few days. They are perfectly willing to corrupt, to do anything they can to produce something a little more attractive to sell something which of itself may have little merit.

I expressed the opinion that there is a very definite corrupting influence in this whole story.

I have two daughters, one 17 and one 10 years of age. They watch these programs. They enjoyed them. I think they had confidence in them as tests of skill and of knowledge.

I think this whole disillusioning story is something which should trouble the conscience of the industry a great deal because they have acted in a manner to contribute to an ever-increasing problem of the ethics of the juvenile population of this country, and they bear a very heavy responsibility for their major role in contributing to the aggravation of that problem. I think this is a perfect illustration of their lack of morality, their lack of ethics.

The CHAIRMAN. Mrs. Kitzing, will you be sworn?

Do you solemnly swear the testimony you will give this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

TESTIMONY OF IRENE FALKE KITZING

Mrs. KITZING. I do.

The CHAIRMAN. Will you state your full name for the record?

Mrs. KITZING. Irene Falke Kitzing.

The CHAIRMAN. What is your address?

Mrs. KITZING. 858 Third Avenue, New York.

The CHAIRMAN. You are a housewife?

Mrs. KITZING. No, I am employed.

The CHAIRMAN. You are?

Mrs. KITZING. I am employed by the Grolier Society, the publishers.

The CHAIRMAN. Miss Falke, who has just testified, is your daughter?

Mrs. KITZING. That is right.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Did you know that your daughter was going to apply for an opportunity for a singing audition on "Tic-Tac-Dough"?

Mrs. KITZING. I didn't know it was "Tic-Tac-Dough." I know there had been a call out for a teenage folk singer to appear on TV. She went down and auditioned and was accepted.

Mr. LISHMAN. When your daughter appeared on "Tic-Tac-Dough," had you watched that show?

Mrs. KITZING. Yes, I had seen it once or twice.

Mr. LISHMAN. Did you believe it was an honest contest?

Mrs. KITZING. Yes.

Mr. LISHMAN. So when your daughter appeared on it the first time, did you see her?

Mrs. KITZING. Yes, I was there.

Mr. LISHMAN. Had you thought it was an honest contest?

Mrs. KITZING. The questions she was asked she should logically know, but about boxing I didn't know how she could answer. She had a logical explanation again. This is one of the reasons I was so annoyed later.

Mr. LISHMAN. Did you watch your daughter's second appearance on "Tic-Tac-Dough"?

Mrs. KITZING. Yes, I did.

Mr. LISHMAN. At that time was there anything that led you to believe that the show was not an honest contest?

Mrs. KITZING. No.

Mr. LISHMAN. When did you first learn that "Tic-Tac-Dough" was a dishonest contest?

Mrs. KITZING. When the news broke in the newspapers. Then I queried Kirsten at the time. I said, well, you know; was it honest?

Mr. LISHMAN. What did she tell you?

Mrs. KITZING. She finally admitted rather shamefacedly that she had been given answers.

Mr. LISHMAN. Did she tell you that Mr. Felsher told her not to reveal the truth to you?

Mrs. KITZING. Yes.

Mr. LISHMAN. What was your reaction to that?

Mrs. KITZING. Any parent would feel outraged, I think, when their child has been deliberately led to be deceptive.

Mr. LISHMAN. Were you aware of the efforts that Mr. Felsher made to keep your daughter from telling the truth to the district attorney?

Mrs. KITZING. Yes, I was.

Mr. LISHMAN. Were you present when the men from the district attorney's office listened in on a telephone conversation between your daughter and Mr. Felsher?

Mrs. KITZING. Yes.

Mr. LISHMAN. Did you feel that in any way your daughter was being bullied or overawed by anyone not to tell the truth?

Mrs. KITZING. I certainly did.

Mr. LISHMAN. Have you ever met Mr. Felsher?

Mrs. KITZING. I met him at NBC during the "Tic-Tac-Dough" show, but not after that. I had telephone conversations with him.

Mr. LISHMAN. Have you voiced your feelings to Mr. Felsher since you discovered what he had done to you?

Mrs. KITZING. I certainly did.

Mr. LISHMAN. Just what is your feeling about this whole matter?

Mrs. KITZING. Well, if adults wish to behave unethically, that is their business. They have their own conscience to live with. But when a youngster is asked to commit perjury or at least is led along that direction, then I think it is disgraceful.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS. Mrs. Kitzing, do you agree with your daughter's present conclusion as to fraudulent practices that were engaged in?

Rather, those practices being fraudulent?

Mrs. KITZING. I think they are.

Mr. ROGERS. If you had known at the time that she went on the show that those practices were to be engaged in, would you have permitted her to go on?

Mrs. KITZING. No.

The CHAIRMAN. Miss Falke, both you and your mother, with the thanks of the committee for the testimony you have given, may be excused and you may go back home if you like in order to be there for school tomorrow. Thank you very much.

Mrs. KITZING. Thank you.

Miss FALKE. Thank you.

The CHAIRMAN. Mr. Sy Fischer.

Are you Mr. Fischer?

Mr. CAMP. No, sir. My name is Camp, of Camp & Fixler of 150 Broadway.

The CHAIRMAN. Is Mr. Fischer here?

Mr. CAMP. He is right here.

The CHAIRMAN. Will you come around this side?

Mr. CAMP. May I respectfully urge the committee to hear this witness in executive session on the ground that his testimony may tend to injure the reputation of another person?

The CHAIRMAN. First, in order that we may get this record straight, will you stand and be sworn, Mr. Fischer?

Do you solemnly swear that the testimony you give to this committee to be the truth, the whole truth and nothing but the truth, so help you God?

TESTIMONY OF SY FISCHER

Mr. FISCHER. I do.

The CHAIRMAN. Have a seat.

State your full name to the committee.

Mr. FISCHER. My name is Sy Fischer.

The CHAIRMAN. What is your address, Mr. Fischer?

Mr. FISCHER. 50 Riverside Drive, New York City.

The CHAIRMAN. What is your business or profession?

Mr. FISCHER. I am an agent in the entertainment business and a past producer of television shows.

The CHAIRMAN. Are you or were you a partner to Frank Cooper Associates.

Mr. FISCHER. Yes. And an employee of Frank Cooper Associates.

The CHAIRMAN. Is that the organization that produced "Dotto" for Columbia Broadcasting Co.?

Mr. FISCHER. The organization that produced "Dotto" not for Columbia but for the advertiser called Marjeff.

The CHAIRMAN. It was broadcast over the Columbia network system?

Mr. FISCHER. Yes, sir.

The CHAIRMAN. You have with you, which the rules of the House permit, counsel to advise you of your constitutional rights. Will you identify yourself?

Mr. CAMP. Salvator J. Camp, of Camp & Fixler, 150 Broadway, New York City.

The CHAIRMAN. I notice you have someone else with you. Is that also a counsel?

Mr. LEVINE. I am counsel for the agency, Mr. Chairman. My home base is California. My name is Irving B. Levine, L-e-v-i-n-e.

The CHAIRMAN. And you are counsel for what agency?

Mr. LEVINE. For Mr. Fischer's agency, for Marjeff, Inc., the producer of "Dotto" and for Frank Cooper Associates.

The CHAIRMAN. You are not here to advise this witness?

Mr. FISCHER. Yes; he is.

The CHAIRMAN. That is Mr. Camp's problem.

Mr. CAMP. We have acted jointly.

Mr. LEVINE. We have acted jointly. He has been in New York. My home base, as I say, is in California. In the discharge of my general duties as counsel for this company, I came in to be present at these hearings and give whatever advice I might be able to, to Mr. Fischer.

The CHAIRMAN. Have you gentlemen had the opportunity to observe the rules of procedure which also includes the Rules of the House of Representatives applicable to hearings?

Mr. CAMP. Yes, sir.

The CHAIRMAN. Then since you have been advised or you are familiar with the rules, then you of course know that you are appearing here to advise Mr. Fischer and not to testify or to speak for him?

Mr. CAMP. I am well aware of that, sir.

The CHAIRMAN. Very well.

I understand, Mr. Camp, that you have requested the committee that Mr. Fischer's testimony be taken in executive session?

Mr. CAMP. Yes, sir.

The CHAIRMAN. You base that—

Mr. CAMP. On rule 4, I believe it is.

The CHAIRMAN. Rule XI, 26, Rules of the House of Representatives, paragraph (m)?

Mr. CAMP. Yes, sir.

The CHAIRMAN. It is on page 9 of the booklet you have?

Mr. CAMP. Yes, sir.

The CHAIRMAN. Which provides that if the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade or incriminate any person, it shall, (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness, and (3) receive and dispose of requests from such person to subpoena additional witnesses.

Is it the contention of Mr. Fischer that his testimony may tend to defame, degrade or incriminate some person?

Mr. CAMP. Mr. Chairman, the motion is based on the section you have just cited, together with section 4 of the Rules of Procedure which appear on page 2, which indicates that if the subcommittee determines that the interrogation of a witness in a public hearing might endanger national security or unjustly injure his reputation or the reputation of other individuals, the subcommittee shall interrogate, et cetera.

The motion is predicated—

The CHAIRMAN. I think you should read the rest of it so it will be complete in the record.

Mr. CAMP (reading) :

Interrogate such witness in an executive session for the purpose of determining the necessity or advisability of conducting such interrogation thereafter in a public hearing.

The CHAIRMAN. That is the purpose of my question, to find out if the subcommittee makes such determination.

Mr. CAMP. Yes, sir.

The only point I was trying to bring up, Mr. Chairman, is that in my considered opinion the testimony of this witness might very well tend to injure the reputation of another person.

The CHAIRMAN. You don't claim the national security is involved?

Mr. CAMP. No, sir.

The CHAIRMAN. Mr. Fischer, is it your feeling that your testimony may tend to defame, degrade, or incriminate some person?

Mr. FISCHER. I am sorry, I didn't hear what you said. Is it my what?

The CHAIRMAN. Is it your feeling that your testimony which you will give to this committee may tend to defame, degrade or incriminate some person?

Mr. FISCHER. I am acting upon advice of counsel in this regard.

The CHAIRMAN. Pardon?

Mr. FISCHER. I said I am acting upon advice of counsel in this regard.

The CHAIRMAN. From what you have been advised and from what you know that you might testify to, is it your contention that your testimony would come under the provisions of the rules of procedure that we just referred to?

Mr. FISCHER. It may upon advice of my counsel.

The CHAIRMAN. You better let your counsel advise you what you want to do and then advise the committee what you want to do.

Mr. FISCHER. The answer is "Yes."

Mr. CAMP. Mr. Chairman, certainly I feel that you don't feel that this witness is contentions at all. It is just when you use words of art, he is not a lawyer, and in posing the question a hundred things may race through his mind, and you may interpret it as being an evasive answer. I can assure you, sir, that any question you will pose will be answered truthfully.

May I proceed, sir?

In addition to what I have already said, if it is your decision that Mr. Fischer testify in public, he will do so. But he also believes that what he has to say might very well injure the reputation of some other person.

The CHAIRMAN. That is precisely why I ask him the question. I was asking for him to answer, Mr. Camp, because he is testifying, and he did answer it in the affirmative. You gentlemen may step aside for the time being. Just have a seat and make yourselves available for the next few minutes.

The CHAIRMAN. Mr. Eric Lieber. Will you be sworn? Do you solemnly swear that the testimony you will give to this committee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LIEBER. I do.

The CHAIRMAN. Will you have a seat. Will you state your full name to the committee?

TESTIMONY OF ERIC LIEBER

Mr. LIEBER. Eric Lieber.

The CHAIRMAN. Mr. Lieber, what is your address?

Mr. LIEBER. 6736 212th Street, Bayside, N.Y.

The CHAIRMAN. What is your business?

Mr. LIEBER. I am a commercial artist.

The CHAIRMAN. Were you associated with the quiz show, "Dotto"?

Mr. LIEBER. Yes, I was.

The CHAIRMAN. Were you the artist for the show?

Mr. LIEBER. One of them, yes.

The CHAIRMAN. What period of time were you associated with the show?

Mr. LIEBER. For its complete duration, sir.

The CHAIRMAN. Pardon?

Mr. LIEBER. For the whole time that it was on.

The CHAIRMAN. What time was that?

Mr. LIEBER. I don't remember the exact dates. I believe it went on in January 1957. That is daytime. It went off some time in September 1957.

The CHAIRMAN. Mr. Goodwin, a member of the staff who investigated a large part of this show, along with other members of the staff, since he is familiar with it, will direct the questioning.

Mr. GOODWIN. Mr. Lieber, what was your function on the "Dotto" show?

Mr. LIEBER. Actually I acted in a supervisory capacity concerning all the caricatures of the people used on the show.

Mr. GOODWIN. You were responsible for the caricatures which we saw on the kinescope this morning, is that correct?

Mr. LIEBER. That is right.

Mr. GOODWIN. During the period of this show, the daytime "Dotto" show, were meetings held daily of the producing staff at which you were present?

Mr. LIEBER. Yes; there were.

Mr. GOODWIN. Who else was present at those meetings, Mr. Lieber?

Mr. LIEBER. Besides myself, usually Mr. Jurist and Mr. Green.

Mr. GOODWIN. Mr. Jurist is the producer of the show?

Mr. LIEBER. Yes; he was.

Mr. GOODWIN. Mr. Green was his chief assistant in charge of daytime "Dotto"?

Mr. LIEBER. All these official designations were not clear at the time. Sometimes Mr. Henley was there and sometimes Mr. Cates was there.

Mr. GOODWIN. Was Mr. Sy Fischer ever present at any of these meetings?

Mr. LIEBER. Yes; at some of them.

Mr. GOODWIN. What was the purpose of these meetings, Mr. Lieber?

Mr. LIEBER. What happened is that we would have a meeting directly after a show to decide what would happen on the next show.

Mr. GOODWIN. At these meetings were decisions made as to who the winning contestants would be the next day?

Mr. LIEBER. Yes; they were.

Mr. GOODWIN. At these meetings were discussions made as to who the losing contestant would be on the next day?

Mr. LIEBER. Yes.

Mr. GOODWIN. At these meetings were decisions made as to whether or not there should be ties between contestants the next day?

Mr. LIEBER. Yes.

Mr. GOODWIN. At these meetings were decisions made as to the number of dots that should be left unconnected on the dotto board at the time the game ended, which number of dots controlled the amount of money that would be won?

Mr. LIEBER. I would say this. I received my instructions in the form of having the picture become obvious at a certain point. I imagine that is what you want. There would be, say if the picture became obvious and identifiable when 35 dots would be connected, therefore 15 dots would be unconnected. Every picture had 50 dots.

Mr. GOODWIN. At these meetings were any discussions made as to the specific number of dots or the number of dots generally that should be left unconnected?

Mr. LIEBER. It was usually decided at what point the pictures would be identified.

Mr. GOODWIN. By so doing, the amount of money that was won on the show could be directly controlled.

Mr. LIEBER. Yes.

Mr. GOODWIN. You were instructed at all times to make the pictures conform to the planned program of the show?

Mr. LIEBER. Most of the time.

Mr. GOODWIN. Whose responsibility was the final decision on all these matters?

Mr. LIEBER. I would say as far as I know, Mr. Jurist.

Mr. GOODWIN. Did this dramatic plotting of the show continue through the entire time you were connected with it?

Mr. LIEBER. Yes, sir.

Mr. GOODWIN. Did the programs go as scheduled to the best of your knowledge?

Mr. LIEBER. Pretty much.

Mr. GOODWIN. Would you say that the control exercised over the winning contestants or whether contestants should lose or tie was over 90 percent?

Mr. LIEBER. I guess so.

Mr. GOODWIN. Were any representatives of Colgate or Ted Bates & Co. agency ever present at any of these meetings?

Mr. LIEBER. Not as far as I can remember.

Mr. GOODWIN. Did you ever have any contact with such people?

Mr. LIEBER. No; not directly.

Mr. GOODWIN. Do you have any knowledge that representatives of Ted Bates & Co. or Colgate Co. realized that controls were being exercised on the "Dotto" program?

Mr. LIEBER. Not directly; no.

Mr. GOODWIN. Before telling us your information, do you have indirect information?

Mr. LIEBER. Well, I saw that there was someone there from the Ted Bates organization.

Mr. GOODWIN. At the program?

Mr. LIEBER. At the program. I didn't know what he knew.

Mr. GOODWIN. Did any representative of the Columbia Broadcasting System ever contact you with regard to whether the controls were being exercised on the "Dotto" program?

Mr. LIEBER. No.

Mr. GOODWIN. Were you contacted after the story broke in the newspapers by any representatives of the Columbia Broadcasting System?

Mr. LIEBER. No.

Mr. GOODWIN. When you were called before the New York grand jury, were you advised at any time by any person connected with Frank Cooper Associates as to what your testimony should be?

Mr. LIEBER. I received no advice at all. As a matter of fact, I called them because I had heard nothing from them. I just got a telegram saying that both shows, nighttime and daytime, had been canceled. I called the Frank Cooper office. I don't remember who spoke to. They referred me to their attorney whose name was Walter Schier. He told me to tell the truth.

Mr. GOODWIN. I have no further questions.

Mr. ROGERS (presiding). Thank you. Let the Chair remind all of the witnesses who have not been heard to report tomorrow morning at 10 a.m.

The public hearing will now stand adjourned, and the committee will resume its hearings in executive session.

(Thereupon a recess of the public hearing was taken until Friday, October 9, 1959, at 10 a.m.)

The special subcommittee met in executive session at 5:30 p.m., in the caucus room, Old House Office Building, Hon. Oren Harris (chairman) presiding, a quorum being present.

(The testimony taken at this executive session was released by the subcommittee by vote taken November 3, 1959.)

The CHAIRMAN. The committee will be in executive session.

Mr. ROGERS (presiding). The subcommittee will come to order.

Mr. Fischer, you heard the statement of the chairman with regard to you making your statement or your appearance in executive session, and the other committee members have heard it. Is there objection to hear Mr. Fischer in executive session?

Mr. SPRINGER. Mr. Rogers, I just want to raise one point. As I understand it, this part of the executive session is to determine—it is preliminary—if names will be injured or innocent people will be harmed. I will not consent to Mr. Fischer to be heard in complete executive session until I know what the tenor of the testimony will be.

Mr. ROGERS. If the gentleman from Illinois desires to go into that, we will certainly do so under the rules.

Mr. Fischer, you will be recognized to explain why your testimony should be taken in executive session.

TESTIMONY OF SY FISCHER—Resumed

Mr. FISCHER. My feeling is this: What I have to tell about the running of the "Dotto" show and whatever disclosures or information I can give you, I am here to give you. In giving this information, I am going to be telling you about my participation in the running of the show and the participation of all my employees who have worked on the show. I cannot be concerned with what anybody else has said about their shows, about their work in television, about their participations as contestants or anything else, but only what I have to tell

you. In the main I am here to tell you that the "Dotto" program was a controlled program. We controlled it. In telling you how we did it, to the best of my knowledge I will be telling you that Mr. So and So in my employ did this, I believe, and Mr. So and So did this, and Mr. So and So did this. I don't want to injure these men unnecessarily in their only means of making a livelihood.

Mr. ROGERS. Are there any innocent people involved that you think this might tend to defame or degrade?

Mr. FISCHER. I can't go with that word "innocent" as opposed to guilty.

Mr. ROGERS. I mean people who were not associated with the scheme?

Mr. FISCHER. No, I am only dealing with those naturally who had anything to do with the "Dotto" show.

Mr. ROGERS. Then the basis of your request that this be held in executive session is as stated by you?

Mr. FISCHER. Yes. Do you fellows think I have excluded anything?

Mr. ROGERS. If you want to advise with your counsel you may feel free to do so, but they understand they cannot testify.

Mr. FISCHER. I understand it.

Mr. ROGERS. Are there any questions, Mr. Flynt?

Mr. FLYNT. No.

Mr. ROGERS. Do you have any, Mr. Springer?

Mr. SPRINGER. Based on that statement, he does not qualify to testify in executive session under the rule.

Mr. ROGERS. Do you desire to question him?

Mr. SPRINGER. No, I stand on the statement he made.

Mr. ROGERS. Mr. Moss?

Mr. MOSS. At this point, under the rules, I am inclined to feel as Mr. Springer. There has been no statement that anyone who is blameless will be implicated. I am interested if that is the contention, that people who are completely blameless will be implicated by your testimony.

Mr. FISCHER. I cannot judge who is blameless and who is not blameless. All I know is that I am going to be talking about everybody I know.

Mr. MOSS. Mr. Fischer, you have made a statement here requesting that rule XI 26 be invoked by the committee. The rule is not automatic. It is a matter which requires the committee to exercise its judgment.

Mr. FISCHER. I understand.

Mr. MOSS. As you are exercising yours. In the exercise of that judgment we are asking you whether you feel that in the course of your testimony you are going to incriminate or at least injure some person who is completely blameless, whose participation may not have been knowingly, perhaps.

Mr. FISCHER. I can't say. I don't know who is blameless and who is not.

Mr. MOSS. Is it your feeling, after all, you have asked for the committee to meet in executive session, that that condition exists?

Mr. FISCHER. Yes.

Mr. ROGERS. Mr. Derounian?

Mr. DEROUNIAN. Mr. Lishman was going to clarify.

Mr. LISHMAN. I was going to attempt to, if I might.

Mr. FISCHER, will any of the persons whom you will name in your testimony or did all of the persons whom you will name in your testimony have knowledge that questions and answers were being furnished in advance to a contestant on that show?

Mr. FISCHER. I don't know.

Mr. LISHMAN. What is the nature of the employment by category of these persons whom you are going to name? What functions did they perform in this production?

Were they mechanical functions or what kind? Describe by functions what they did so we can come to some idea whether or not they were in complicity in this affair.

Mr. FISCHER. I might say that if you use the word complicity, yes, they are all people who worked in the production of the program in various phases of the show.

Mr. LISHMAN. Can you name them and tell us what he did, and then we can decide.

Mr. FISCHER. I can name all of the categories of the people involved in the show.

Mr. LISHMAN. Why name the people?

Mr. FISCHER. The MC, the producer.

Mr. LISHMAN. Let us stop at the MC. Did he know that the contestants had been controlled?

Mr. FISCHER. I don't know.

Mr. LISHMAN. Did you ever discuss with him the control of contestants, with the MC?

Mr. FISCHER. No, I don't believe I did.

Mr. LISHMAN. Did you ever hear anybody else discuss with the MC the control of the contestants?

Mr. FISCHER. I don't recall ever having talked with him or been in a conversation with others with him on this behalf.

Mr. LISHMAN. Is it possible that assistance could have been given to the contestants without the MC knowing that assistance had been so given?

Mr. FISCHER. Sure. Yes, I think so.

Mr. LISHMAN. Even with a kicker question on the card?

Mr. FISCHER. No.

Mr. ROGERS. Mr. Flynt.

Mr. FLYNT. I don't want to question the witness. I have heard the comments that have been made both by the committee counsel and by the witness and his counsel. While I think the rule might be better read a little differently, I think that the only question now to be decided, without going into these matters which I don't consider relevant to this point, is the action of the committee in whether to grant the request.

Mr. ROGERS. Thank you. Did you have any questions, Mr. Derounian?

Mr. DEROUNIAN. No questions.

Mr. ROGERS. In the opinion of the Chair I think the witness is qualified, although it could be a borderline decision, and the Chair will rule that the hearings will be held in executive session. Of course, Mr. Fischer, you understand that you are to give a full and complete statement with regard to these individuals that you have in mind.

Mr. FISCHER. Absolutely.

Mr. ROGERS. You may proceed, Mr. Lishman.

Mr. LISHMAN. Mr. Goodwin will ask the questions.

Mr. FISCHER, I thought you had understood before. There is a possibility, of course, that the transcript in this hearing will subsequently be made public.

Mr. FISCHER. I understand.

Mr. LISHMAN. You testify with full and complete knowledge of that possibility.

Mr. FISCHER. Yes, I do.

Mr. GOODWIN. Mr. Fischer, in what capacity did you serve the quiz program, "Dotto?"

Mr. FISCHER. I was the sales agent for it. Then I functioned as a supervisor of the program for my agency.

Mr. GOODWIN. In the New York office were you the chief of the Frank Cooper Associates?

Mr. FISCHER. Yes.

Mr. GOODWIN. Were you also the president of Marjeff?

Mr. FISCHER. No, I am an employee of Marjeff.

Mr. GOODWIN. Is Marjeff, Inc., a wholly owned subsidiary of Frank Cooper Associates?

Mr. FISCHER. Of Frank Cooper Associates?

Mr. GOODWIN. Yes.

Mr. FISCHER. No, I think no.

Mr. GOODWIN. Who controls that corporation?

Mr. FISCHER. Frank Cooper.

Mr. GOODWIN. He also controls Frank Cooper Associates?

Mr. FISCHER. Yes.

Mr. GOODWIN. It is under common control?

Mr. FISCHER. Yes.

Mr. GOODWIN. Marjeff, Inc., was responsible for the production of "Dotto," was it not?

Mr. FISCHER. Yes.

Mr. GOODWIN. In your connection with the quiz show, "Dotto," did you have charge of the hiring and firing of the producers?

Mr. FISCHER. Yes.

Mr. GOODWIN. The production staff?

Mr. FISCHER. The high-level people, the producer primarily.

Mr. GOODWIN. Who initiated the quiz show, "Dotto"?

Mr. FISCHER. It was created by a man named Snag Werris and Al Schwartz.

Mr. GOODWIN. When did you first come in contact with the program?

Mr. FISCHER. Frank Cooper had sent, the California office had sent me a copy of the treatment of the show. I think some time in 1957.

Mr. GOODWIN. From the time the show was first produced, was it your understanding that this was to be a controlled quiz show?

Mr. FISCHER. Yes.

Mr. GOODWIN. How did you arrive at such an understanding? Was the decision made among the producers of the show, or the packagers that they would control the quiz show?

Mr. FISCHER. No. It seemed inherent to the format of the show.

Mr. GOODWIN. Had you produced quiz shows before?

Mr. FISCHER. Yes.

Mr. GOODWIN. What shows?

Mr. FISCHER. There was a radio show called "Second Chance."

There was a television show called "Keep It in the Family."

Mr. GOODWIN. Were those shows also controlled?

Mr. FISCHER. Yes, they were.

Mr. GOODWIN. Was it your feeling at the time that quiz shows generally had to be subject to controls?

Mr. FISCHER. Generally, yes.

Mr. GOODWIN. There were exceptions?

Mr. FISCHER. If there were, I don't know of them. But I never studied them. I qualify this because it could be determined just by the format of the show.

Mr. GOODWIN. Was this practice of exercising controls on television on quiz programs so widespread that it could be reasonably assumed that it was generally known in the industry?

Mr. FISCHER. I think so.

Mr. GOODWIN. Who devised the specific methods of the control to be used on the "Dotto" program?

Mr. FISCHER. I don't know if there was any such particular device used in controlling the show.

Mr. GOODWIN. One of the purposes of these controls is to stay within budgetary limitations?

Mr. FISCHER. Not really within the format of "Dotto." In other words, the budget estimate was made when the show was originally formed. By that I mean, working backward from a 13-week period, and then down to a weekly period, and then down to a daily period, and then down to a unit, that is, each game played. A mathematical progression was made on some estimates of how much could be won in each particular game. That was finally determined in the individual unit of how much a contestant could win. If he identified a picture and there were 20 dots left unconnected, that could have been \$10 per dot or \$100 per dot or \$1,000 per dot. But in selling the show we had a budget requirement to meet, and it was then that it was decided to make it \$10 per dot. This was on the daytime show.

Mr. GOODWIN. But in order to control the amount of money that was won, it was necessary to decide or to have some control over the number of dots that would be left unconnected, was it not?

Mr. FISCHER. In part, yes. What I say is that it was not a prime mover. I must make the difference in the format of a show. I must say I must relate myself only to "Dotto," because that is the only show I know about. The "Dotto" program fundamentally—I suppose you have all seen it—being able to identify a caricature of a famous personality when a certain number of dots were exposed.

Mr. GOODWIN. That is right. The number of these dots that were left exposed determined the amount of prize money, and hence your ability to stay within your budget mathematical progression, did it not?

Mr. FISCHER. I say in part, yes. I cannot say that this was the prime purpose, because indeed it was not. It would be impossible, you see, to do a show where all the dots, all the 50 dots or 25 dots or whatever it was that we used, were connected before someone could identify the person.

Mr. GOODWIN. At the meetings which took place both before the daytime show of "Dotto" and the conferences that occasionally took place before the nighttime "Dotto," was it discussed what dots would be left unconnected with various individual contestants?

Mr. FISCHER. Yes.

Mr. GOODWIN. And the decisions were made as to the dots left that would be left unconnected?

Mr. FISCHER. That we hoped would be left unconnected at the time that the picture was identified.

Mr. GOODWIN. What positive steps did you take to insure that this hope would be fulfilled?

Mr. FISCHER. There were two. One was in the construction of the "Dotto" drawing. The drawing itself could be made in a number of ways. You, for example, might be drawn where your hairline might be drawn in first, and then your glasses, and then your heavy eyebrows, forgive me, your stern visage, and so forth, you know. The placement of when these identifiable features would be put in would determine whether we wanted a picture identified quickly or halfway through the game or toward the end.

Mr. GOODWIN. Were contestants ever told at what point to identify the picture?

Mr. FISCHER. Not to my knowledge.

Mr. GOODWIN. No contestant then was told at what point to "Dotto"?

Mr. FISCHER. Not to my knowledge.

Mr. GOODWIN. Were you ever told by Mr. Jurist that the representative of the sponsor, Colgate, had come to him and told him that you were exceeding your budget and that people would not be able to win so much money, or should not win so much money?

Mr. FISCHER. Are you referring to the nighttime show?

Mr. GOODWIN. I believe that is right, yes. Mr. Laboda was the representative of Colgate.

Mr. FISCHER. I am not too clear on this, but I think there was one such instance. I can't be specific about it, because it is not clear.

Mr. GOODWIN. Did you take any steps at that point to insure that less money would be won?

Mr. FISCHER. I don't think so.

Mr. GOODWIN. Is it a fact that the next week less money was won, and the budget was therefore brought down closer to what had originally been planned?

Mr. FISCHER. I can't tell you that, because I can't reflect or place this in any one particular.

Mr. GOODWIN. Were you present at meetings at which it was decided which contestants would win on the following "Dotto" program?

Mr. FISCHER. From time to time in the discussions that we had, that is, in setting up the pictures, where we hoped someone would win over the other, where we would weigh one possible win over another.

Mr. GOODWIN. Did you not exercise control?

Mr. FISCHER. If you put this in a specific, to my knowledge we never had a specific. We never had any foolproof system that would assure us absolutely that someone would win at one particular dot.

Mr. GOODWIN. Mr. Lieber just testified that in his experience your control was 90 percent effective in carrying out the decisions that were made at the daily conference of "Dotto."

Mr. FISCHER. I can't answer for Mr. Lieber, but I know that we did not every day decide that such and such a person was going to win. We didn't have to. We had even matches where it didn't matter. It just didn't matter.

Mr. GOODWIN. Were there many matches where you desired to favor one contestant over another?

Mr. FISCHER. Yes, of course.

Mr. GOODWIN. Were those matches controlled so that they would win?

Mr. FISCHER. Yes.

Mr. GOODWIN. Were they controlled either by giving them the questions and answers in advance, or by finding out if they had in their possession the specific information which you would later call for in the show?

Mr. FISCHER. I will have to address myself to your question which has two parts. The first, you say, "Did you ever give answers?" The answer to that is, to my knowledge we never did. To the second part, dealing with those areas of knowledge, I think you said, this is the way the question and answer part of the control was effected.

Mr. GOODWIN. In these dealings with areas of knowledge were the questions designed to find out the specific information that a contestant knew in order that he might be asked to repeat or relay that information back again on the program when he was asked the question?

Mr. FISCHER. Incidentally, I must say this, as far as this means of control that you talk about, and that I talk about, I have never myself done. There were employees, production assistants who did the actual screening to determine what they knew and didn't know. I am speculating actually as to whether this was the actual device used.

Mr. GOODWIN. Were you aware of the specific type of controls that were being exercised on your program?

Mr. FISCHER. The specific types?

Mr. GOODWIN. Yes.

Mr. FISCHER. As I have just said, "No." I had a general impression of the screening of contestants in order to determine what they knew and didn't know, the means that production men generally used.

Mr. GOODWIN. Were you aware that many of the contestants were screened immediately prior to the program where they were asked virtually the identical questions that would appear on the program?

Mr. FISCHER. I have since come to understand that was done.

Mr. GOODWIN. You have since come to understand that was a fairly frequent practice?

Mr. FISCHER. Fairly frequent?

Mr. GOODWIN. Yes.

Mr. FISCHER. Yes.

Mr. GOODWIN. With this in mind, when this practice was exercised is there any distinction between asking the questions that would later be asked on the program and giving the answer to the contestant in advance?

Mr. FISCHER. To me there is. I cannot tell you that this was done. You are saying that a question was asked of somebody before they went on the show as part of the general interview that the production assistant had, and then when they went on the show, the same question was asked?

Mr. GOODWIN. You just testified to your knowledge this was done. Your understanding is that this was done fairly frequently. After you answered that, I asked if that is any different than giving the answer.

Mr. FISCHER. I must correct because I thought you were saying was it to my knowledge that the contestant was interviewed or briefed, talked to, or suggestions used, whatever devices used, done before the show. I say "Yes." Whatever the devices used, were used, were done before the show or the day before the show. That was a frequent occurrence. But as far as the specific is concerned, putting questions to a contestant and asking the same question on the air, that I can't say was done, or not done, for that matter.

Mr. GOODWIN. What was the purpose of these autosuggestions? Was their purpose to make sure that the witness would answer the question correctly to be given him on the program?

Mr. FISCHER. Contestant?

Mr. GOODWIN. Contestant.

Mr. FISCHER. To hope that the question asked would be answered correctly.

Mr. GOODWIN. You could have hoped without using any techniques of autosuggestion. Wasn't the purpose of these techniques to insure that these hopes of yours would be fulfilled?

Mr. FISCHER. Yes.

Mr. GOODWIN. Did they work effectively?

Mr. FISCHER. Quite effectively; yes indeed.

Mr. GOODWIN. So that you were able with a great degree of accuracy to control the program "Dotto"?

Mr. FISCHER. Yes, sir. I must point out, if I may, however, that in my show we did not require—and I am talking about degree now—that much control, that much body English, if you will, on questions and answers because the format of our show had something far simpler. This is why it was successful, I think. That is identifying a picture as it became exposed.

Mr. GOODWIN. Are you familiar with the testimony of Mr. Davis Huschle, that he was told all the questions and answers prior to his appearance on the program?

Mr. FISCHER. No; I was not here.

Mr. GOODWIN. That he was told at which point to "Dotto," and who the caricatures would be?

Mr. FISCHER. I was not here then.

Mr. GOODWIN. Is that a possible occurrence on your program?

Mr. FISCHER. A possible occurrence?

Mr. GOODWIN. Could that have happened?

Mr. FISCHER. From what I know now, it could have happened.

Mr. GOODWIN. Did you ever instruct people to exercise control over contestants? Any of your subordinate employees?

Mr. FISCHER. Instruct them?

Mr. GOODWIN. Yes.

Mr. FISCHER. It was inherent in the program that controls had to be used.

Mr. GOODWIN. Did a representative of Ted Bates & Co., a Mr. Walsh, ever request you to keep a woman called Connie Hines on the show?

Mr. FISCHER. Request of me?

Mr. GOODWIN. Do you know of any such request?

Mr. FISCHER. I heard something about it. It was third party information. As I heard about it, it was not a request. It was that kind of inference, that it would be fine to keep her on. As far as I know, it was not a request. I must say that I did not talk to Mr. Walsh nor to my knowledge did he ever tell me that he wanted her kept on.

Mr. GOODWIN. Were there other instances that either the sponsor or representative of the advertising agency requested or inferred that contestants should be continued or dropped from the program?

Mr. FISCHER. That may well have been, but I don't know of any. I don't know of any specific.

Mr. GOODWIN. When you say there may well have been, you mean it is logical to expect them to have done so at one point or another?

Mr. FISCHER. Yes.

Mr. GOODWIN. Is that because they were aware that you had the capacity to carry out such request?

Mr. FISCHER. I don't know what they would have assumed. I am sure that they knew we effected some kind of control. But whether we could have guaranteed anything, never. Never without having actually given the questions and answers.

Mr. GOODWIN. On what basis are you sure that they knew you effected some kind of control?

Mr. FISCHER. Only from the point of view that I have always assumed—I have always felt that it was common knowledge in the business that controls were used in most quiz shows.

Mr. GOODWIN. You would expect it as a matter of life of the industry to occasionally have a request come from a sponsor that a particular contestant be continued or dropped?

Mr. FISCHER. I don't understand.

Mr. GOODWIN. A matter of common practice in the television industry that occasionally a sponsor might request that a contestant be continued or dropped and expect you to have the capacity to at least some extent carry out those wishes?

Mr. FISCHER. I can only relate that with which I am familiar, and that is the "Dotto" show. I can't recollect any extravagant control on the part of the advertiser.

Mr. GOODWIN. Do you recollect any nonextravagant control?

Mr. FISCHER. As I say, there may well have been, but I cannot think of any specific. I would point out to you that I was not in control of the day-by-day operation of the show.

Mr. GOODWIN. Would you say that the ultimate responsibility for the manner in which the program was being conducted was your responsibility?

Mr. FISCHER. Yes; I think so.

Mr. GOODWIN. Were any representatives of the network ever aware that controls were being exercised in your program?

Mr. FISCHER. I don't recall ever having had any discussion with any members of the network.

Mr. GOODWIN. Again would you assume that the knowledge of controls was so widespread that people in the industry, including representatives of the network, must have known that controls were exercised?

Mr. FISCHER. I would assume so.

Mr. GOODWIN. Did you contact any persons in your organization or contestants prior to their visits to the district attorney or the grand jury during the time of the New York grand jury investigation?

Mr. FISCHER. We had—prior to the grand jury investigation?

Mr. GOODWIN. Prior to or during.

Mr. FISCHER. None during. Prior to the investigation we had, upon the request of the Columbia Broadcasting System, and of the Ted Bates Agency, called a contestant to our office so that their attorneys could speak with her.

Mr. GOODWIN. Who was that contestant?

Mr. FISCHER. Marie Winn or May Winn.

Mr. GOODWIN. Immediately after Colgate Co. learned Marie Winn had been given questions and answers, did they drop your program?

Mr. FISCHER. You are loading this question. They dropped the program after, I think a week after they talked with the contestant.

Mr. GOODWIN. What was their reason for dropping the program?

Mr. FISCHER. I think—well, they sent us a letter in which they said their investigation showed that there were irregularities and that they were shocked beyond belief and good night.

Mr. GOODWIN. In view of your feeling that these controls were widespread and known, did you regard this as being the basic reason behind their action, that they found the contestant had been controlled?

Mr. FISCHER. In view of my—

Mr. GOODWIN. In view of the fact that you assumed that the fact of controls would be known by the agency that it surprised you that they dropped the program when they found out that a contestant had been given the questions and answers?

Mr. FISCHER. Well, I can only assume this. Once a disclosure was made to the public in general as to a production device, a means of showmanship, or whatever it may be called, once the device itself is explained to the public, then the program loses its value. I think they had no alternative.

Mr. GOODWIN. How could they have been so shocked when at a previous time a representative of Colgate, Mr. Laboda, had visited and asked you to cut down on the prize amount you awarded?

Mr. FISCHER. I am only repeating as I remember the letter the agency sent us. I think the word "shock" was in it. As far as George Laboda's comment on the prize money is concerned, it really doesn't relate.

Mr. GOODWIN. Was it your decision to pay \$1,500 to Edward Hilgemeier?

Mr. FISCHER. Yes; it was.

Mr. GOODWIN. What was the purpose of paying him that money?

Mr. FISCHER. He had, with a contestant whose name was Kimball, made a claim that they had been unfairly treated on the program, and

after I consulted with our legal counsel and the producer, our decision was to settle the claim as expeditiously as possible.

Mr. GOODWIN. Mr. Hilgemeier never appeared as a contestant on that program, did he?

Mr. FISCHER. No.

Mr. GOODWIN. What was the basis of his claim?

Mr. FISCHER. His claim was that he had been unfairly treated.

Mr. GOODWIN. In what possible manner could he have been unfairly treated since he did not appear on the program at all?

Mr. FISCHER. As best I could both understand and recollect, he felt that he had been a standby contestant, and that after he had gone to Miss Kimball that we would not use him on the program, and he had lost an opportunity to be on the program. I presume this was the nature of the claim. The actual basis of it I am not prepared to pass on.

Mr. GOODWIN. Did you or Mr. Jurist decide to pay him the money in order to keep him from making the story public?

Mr. FISCHER. I paid him to settle the claim as we paid Miss Kimball.

Mr. GOODWIN. The purpose was not to give him the money in order not to make the story public?

Mr. FISCHER. If that was a part of the results of his being paid, then that was part. My position in settling the claim as economically as possible was——

Mr. GOODWIN. You say if that was part of the purpose. Only you, Mr. Fischer, can tell us if it was part of the purpose.

Mr. FISCHER. I will tell you. My purpose was in order to settle the claim that had been made by a couple of people in order that I might continue to put my attention to the show.

Mr. GOODWIN. You realize that if his story was made public, it would severely harm your show.

Mr. FISCHER. Of course.

Mr. GOODWIN. Was one of the purposes in giving him the money at least the hope that he would not make the story public and severely harm your production?

Mr. FISCHER. Yes.

Mr. GOODWIN. When the network officials began their investigation, and Colgate, did you have a meeting in which you talked with the contestant, Marie Winn?

Mr. FISCHER. Yes.

Mr. GOODWIN. At this meeting was it decided——

Mr. FISCHER. Wait a minute. I don't recall now whether I had a meeting with her. I don't believe I did. I think I talked with her on the telephone. I don't think I had a meeting.

Mr. GOODWIN. Did you and your producers decide that Marie Winn should tell the story, that she had written the answer in the notebook subsequent to her appearance, rather than before?

Mr. FISCHER. There had been some discussion, yes. There had been some discussion that we had along those lines.

Mr. GOODWIN. Did you decide that would be the story?

Mr. FISCHER. I don't recall. I believe she actually met with the attorneys from Ted Bates and from CBS. We told her just to tell the truth as she saw it. I must say this happened a year or a year and a half ago, almost 2 years, whatever it was, and I am not too clear on it.

Mr. GOODWIN. You are not clear that during an investigation of your production by CBS and your sponsor on which the fate of your production was at stake, as to whether or not you advised Miss Winn to lie to them as to the circumstances which surrounded it?

Mr. FISCHER. I may well have, but I cannot tell you that I did.

Mr. GOODWIN. During the course or after the time this congressional investigation was announced, did you advise Mr. Jerome Schnur to leave the country?

Mr. FISCHER. No.

Mr. GOODWIN. Are you aware that Schnur left the country?

Mr. FISCHER. Yes; I am.

Mr. GOODWIN. Are you aware that he left the country after our process servers first attempted to get in touch with him?

Mr. FISCHER. Yes; I am, but I can tell you, too, that I was aware that he was going to go to Europe some time before I was aware that you were having these sessions.

Mr. GOODWIN. Are you aware that Mr. Schnur left for Europe shortly after we visited your offices in New York and asked for his address and location?

Mr. FISCHER. Yes.

Mr. GOODWIN. Did you talk to Mr. Schnur subsequent to our visit to your office?

Mr. FISCHER. Yes; I did.

Mr. GOODWIN. Did you tell him that members of the subcommittee staff were looking for him?

Mr. FISCHER. Yes; I did.

Mr. GOODWIN. Did he advise you that he was going to Europe anyway?

Mr. FISCHER. Yes; I think he did.

Mr. GOODWIN. What was your reaction to that?

Mr. FISCHER. I don't think I had any comment to make to him.

Mr. GOODWIN. You didn't tell him since he was being looked for at that time by congressional investigators that he might stay to see what they wanted?

Mr. FISCHER. I have learned, perhaps late in life, to take advice as best I can, and as I exhibited here an hour ago, and also not to give advice in areas over which I have no knowledge. I could not advise him.

Mr. GOODWIN. Did Mr. Schnur say to you that he was aware that members of our staff were looking for him?

Mr. FISCHER. Did he tell me?

Mr. GOODWIN. Yes.

Mr. FISCHER. Yes.

Mr. GOODWIN. Did he say what he was going to do? Did he tell you he was going to leave for Europe?

Mr. FISCHER. I don't know that he had made up his mind. I think he did say he was going.

Mr. GOODWIN. You don't know if he had made up his mind at that point whether he was going to Europe?

Mr. FISCHER. There seemed to be some doubt in his mind.

Mr. GOODWIN. That doubt was quickly resolved, was it not?

Mr. FISCHER. I had no part in that resolution.

Mr. GOODWIN. What was Mr. Schnur's capacity on the program?

The CHAIRMAN. Let him finish his statement.

Mr. FISCHER. I must state, and I want to state, that I know, because I also serve as Mr. Schnur's agent, he had planned on going to Europe for quite some time. As a matter of fact, I had a job for him that he had to turn down or he elected to turn down because he did not want to put off his trip.

I should also state, and perhaps I should not do this, he was a voluntary witness before the grand jury. He has been helpful in every way that I know.

Mr. GOODWIN. Mr. Fischer, Mr. Schnur was the director of the program "Dotto," was he not?

Mr. FISCHER. Yes. Then he became the producer director.

Mr. GOODWIN. Mr. Fischer, did you refuse to sign a waiver of immunity before the grand jury?

Mr. FISCHER. Yes; I did.

Mr. GOODWIN. Did you refuse to talk with any of our investigators in New York prior to your appearance before this committee?

Mr. FISCHER. Yes. Upon advice of counsel.

Mr. GOODWIN. I have no further questions.

Mr. ROGERS. Are there any other questions?

Mr. Flynt?

Mr. FLYNT. Mr. Fischer, do you separate in your mental processes this type of action and the fixing of an athletic contest such as a prize fight, basketball game, or baseball game?

Mr. FISCHER. Yes; I do.

Mr. FLYNT. What is the difference?

Mr. FISCHER. I believe in a fix there is no doubt as to the outcome of a contest or of a play, for one thing. For another, and I don't know whether I can articulate this because it is hard for me to do so, but I am in the business of entertainment.

While you might very well point out to me that a prize fight is a piece of entertainment, too, I can only conceive of a fixed fight as a means to come by money by some evil process.

Mr. FLYNT. Let us go to one where there are more than two participants, where an attempted fix would not necessarily determine the result, but might do it.

Say one star player on an athletic team consisting of five or nine members, where it would not necessarily determine the result but would influence it greatly.

Mr. FISCHER. It is a good analogy, sir. I cannot contest it.

Mr. FLYNT. At what point in this entire thing did it occur to you that this was not in the public interest?

Mr. FISCHER. I cannot say to you, I cannot really say to you, sir, that it was not in the public interest. I cannot say it was in the public interest.

Mr. FLYNT. Do you feel the same way about it now that you did 2 years ago?

Mr. FISCHER. My feelings about quiz shows naturally have had to undergo some violent and certainly subjective thinking. But I can tell you that at the time that I worked the "Dotto" show, I think all the people around me, we gave no thought to an analogy such as the fixing of a fight. Our intent was to provide entertainment and not have a contest certainly, sir, where we would be harming anyone.

Mr. FLYNT. This was presented, however, in every instance as a contest based on the skill and knowledge of the participants?

Mr. FISCHER. Yes.

Mr. FLYNT. If it had been an acting contest, as some of them have developed to be, then wouldn't it have been proper to have described it as an exhibition rather than a contest?

Mr. FISCHER. Once again, Mr. Flynt, I cannot speak for any show other than the "Dotto" show. If I were bright enough or if I knew mathematics well enough, I feel even at this date that I could show that there was a distinct relationship between the winners and the amounts that they won and their own capacity for answering, for using their innate or acquired skill on questions of general interest, or indeed the absolutely unrelated skill of recognizing a picture.

Mr. FLYNT. The only difference in your mind then being that a controlled show provided better entertainment and therefore attracted a greater viewing audience?

Mr. FISCHER. Yes, it did.

Mr. ROGERS. Mr. Springer.

Mr. SPRINGER. Mr. Fischer, this is substantially the testimony that you expect to give, is that correct?

Mr. FISCHER. I am here to answer any questions that I can. I have no statement to make.

Mr. SPRINGER. Would you now give me the name of one person whom your testimony has tended to defame, degrade, or incriminate in a crime?

Mr. FISCHER. In a crime?

Mr. SPRINGER. Read the question.

(The pending question was read by the reporter.)

Mr. FISCHER. None that I know of in a crime.

Mr. SPRINGER. When did you first become aware of the rules of the House?

Mr. FISCHER. It was explained to me by counsel.

Mr. SPRINGER. How long ago?

Mr. FISCHER. I think it was sometime yesterday.

Mr. SPRINGER. What did they explain to you were the rules of the House under which you have claimed as your privilege to be heard in executive session?

Mr. FISCHER. Let me best try to—

Mr. SPRINGER. Read the question. Answer that.

Mr. FISCHER. I understand it, sir. Let me best try to give you my impression. It may be the same thing I said at the opening here today.

Mr. LEVINE. May I give advice to the witness, please, Mr. Springer?

Mr. SPRINGER. That is your privilege, if you want to advise him.

Mr. LEVINE. Thank you, sir.

Mr. FISCHER. What I was going to say, sir—

Mr. SPRINGER. Do you remember the question?

Mr. FISCHER. Yes, I do.

My feeling is that my conversations in the light of the fact that I am here to tell you that the "Dotto" program was controlled and that all our employees to some extent effected these controls, giving this in public and having it printed, I feel would injure, and it may have anyway, Ed Jurist, Jerry Schmur, any person who is now engaged in trying to earn their livelihood in the television business from being engaged in anything else in the television business.

Mr. SPRINGER. According to my recollection of your testimony, you have not named one of those people.

Mr. FISCHER. I have discussed——

Mr. CAMP. Excuse me, sir, my recollection——

Mr. ROGERS. Wait a minute, Mr. Camp. If you want to advise him, it is fine.

Mr. CAMP. I don't want to advise him how to answer the question. I am addressing myself——

Mr. ROGERS. You cannot do that. The witness is Mr. Fischer. You are not allowed to testify in this.

If you want to advise him as to what it is and let him testify——

Mr. CAMP. I don't want to advise him what to testify.

Mr. ROGERS. I do not want you to advise him how to testify, but I want you to give him any legal advice he needs.

Mr. FISCHER. Let me ask my friends if I am indeed in need of legal advice.

Mr. CAMP. No, you are not.

May I address myself to the question?

Mr. SPRINGER. Read the question back, Mr. Reporter.

(The pending question was read by the reporter.)

Mr. ROGERS. That is a proper question for Mr. Fischer to answer, Mr. Camp.

Mr. CAMP. I know that.

May I address myself——

Mr. ROGERS. No; I do not want you to. You are not supposed to be in the record.

Mr. Fischer, if you will answer that to the best of your ability, I will appreciate it.

Mr. FISCHER. I feel that I have discussed a number of people, and I cannot go over them at this moment, but the record, I imagine, has them.

Also, I have replied to inquiries in which the people have been named.

But also, sir, as I may, I have come here as a witness prepared to answer anything that you put to me. Without knowing what it is that you are going to put to me, I would then say in advance of having our hearing that any comments I might make with respect to the various people on the show which might cause them some hardship, I am loath to do.

Mr. SPRINGER. Mr. Fischer, frankly, what you did was talk this over with your attorneys and devised a way that you thought you could impress this committee without the necessity of appearing in public hearing, is that not correct?

Mr. FISCHER. No, sir.

Mr. SPRINGER. That is all.

Mr. ROGERS. Mr. Moss?

Mr. MOSS. Mr. Fischer, you indicated that it was determined from the very beginning to handle this as a controlled program, is that correct?

Mr. FISCHER. Yes, sir.

Mr. MOSS. Now, for the record, would you tell us your definition of a controlled program?

Mr. FISCHER. I will relate it only to the "Dotto" show.

Mr. Moss. That is all we are interested in.

Mr. FISCHER. Right.

When I engaged our producer, I engaged a man who had done quiz shows before. In engaging him I expected him to know everything there was to know about mounting a show, part of which—and this was never discussed as far as I can remember as to his abilities, his credits—part of which I will assume in retrospect he knew how to handle the controls in the show which, from my point of view, would provide a maximum of entertainment.

Mr. Moss. What are those controls? That is the thing I want to find out.

Mr. FISCHER. I am sorry if I strayed.

My point actually is that the controls and the means of them are used by the producer. I do not do it. I do not deal with the contestants.

As a matter of fact, I think he in turn had other production assistants who actually handled the contestants.

Mr. Moss. Over a period of years, as a result of your activity in connection with producing or developing salable shows for television, you had developed familiarity with the term "controlled show"?

Mr. FISCHER. Yes, sir.

Mr. Moss. That has a certain connotation to you?

Mr. FISCHER. Yes, sir.

Mr. Moss. It means something. It means more than just merely that the producer also knew what it meant?

Mr. FISCHER. Yes, sir. I am not trying—

Mr. Moss. I know you are not.

I want the record to be very clear on this. I want your interpretation, what connotation do you put on "controlled show"?

Mr. FISCHER. I am not trying to dodge or hedge any responsibility, as I have told you. The responsibility of the program has been mine.

The controls, as I have known them without actually having used them myself, have generally dealt with determining both in a positive and negative way the areas of knowledge a potential contestant may have. He may be well versed in historic battles in which the United States took part. He may know music very well. But he may know nothing about baseball.

Both these elements have importance to a producer controlling a show.

Also, sir, if I may, and more important—much more important—is that it permits the producer to match that man more properly against someone with a like knowledge, so that you have indeed a good enough contest.

If I were to spar with you on law, I couldn't make it.

Mr. Moss. You might come out very well; I am not a lawyer.

The format of a show was to be that of a controlled quiz in essence, a modification to take care of the identification of the caricature. Is that correct?

Mr. FISCHER. In essence, yes.

Mr. Moss. Then by control you mean to use whatever methods will best exploit those who are selected as contestants, is that correct?

Mr. FISCHER. By whatever method.

I beg your pardon?

Mr. Moss. Yes. By whatever method necessary to exploit those who were selected as contestants. To determine their capabilities.

Mr. FISCHER. Yes.

Mr. Moss. Tailor the script to fit their pattern?

Mr. FISCHER. Yes.

Mr. Moss. Where you felt perhaps they might contribute to the viewer interest. Perhaps they had an appeal. They were very personable people.

Mr. FISCHER. Yes.

Mr. Moss. If they were, you tried to keep that type of person on for a longer period, is that correct?

Mr. FISCHER. Generally speaking; yes.

There might be some militating circumstances, notwithstanding how appealing the people may be.

Mr. Moss. We assume they are cooperative, also.

Mr. FISCHER. Cooperative?

Mr. Moss. Apparently in this relationship there has had to be an element of cooperation from the contestant with the producers.

Mr. FISCHER. Not from my point of view, sir.

Mr. Moss. With those of your subordinates.

Mr. FISCHER. I cannot answer for them.

I do want to make this point: The only people we wanted to put on the "Dotto" program were people who wrote us and said they wanted to appear, and there were millions. We have received a million cards in a week. They then were treated, screened, handled by the production assistants in preparing them for the show. But they didn't have to cooperate.

Mr. Moss. We heard three former contestants here in this room today. All three of them testified that exact answers to questions were given them, and instructions as to whether to go for a tie or a win or a loss.

Was that an unusual occurrence on your program?

Mr. FISCHER. I would say so, to my knowledge.

As far as I am concerned, the actual use of controls——

Mr. Moss. Were they limited by definition either on your part or the part of any other person responsible to you?

Mr. FISCHER. Yes, I would say so.

Mr. Moss. Did you ever instruct anyone that he was not to give questions or answers to contestants?

Mr. FISCHER. I am quite sure that I never instructed anyone to give questions and answers, although my dealings with the people on my staff, as jurist—the deal with us was that in the use of controls, do everything you could, short of—short of—giving questions and answers.

Mr. Moss. Did that include giving a lot of questions and answers in formal discussions?

Mr. FISCHER. I don't know, sir, because you are dealing with a specific production technique which, as I say, I never employed.

Mr. Moss. I am puzzled how you could have the idea of a controlled show without having some familiarity with the degree of control maintained, some conception of what you meant by the term "controlled" in relation to your show.

Mr. FISCHER. I will tell you as best I can.

For one, I came into the business being aware of controls used in programs of this kind almost as inherent to the program as having an announcer with some training in the resonance of his voice. I generally did not deal with the background of the announcer or his training.

Really, I, and I believe most people in my business, did not deal with the specific techniques used in each department of the show.

Mr. MOSS. The controls were designed to produce a more appealing show, is that right?

Mr. FISCHER. Yes.

Mr. MOSS. And also, I believe, in connection with your evening show, they had some relationship to budget, did they not?

Mr. FISCHER. They may have.

Mr. MOSS. Is not budget all important in a show from your standpoint? You have a limited budget?

Mr. FISCHER. Yes, of course.

Mr. MOSS. You have to live with it?

Mr. FISCHER. Yes.

Mr. MOSS. You are very conscious of it, are you not?

Mr. FISCHER. Yes.

Mr. MOSS. Therefore, it has an important bearing upon the handling of the controls in the show, does it not?

Mr. FISCHER. But as far as the "Dotto" program was concerned, unless I am wrong in thinking back now—this is why I stress the importance of the formula of the particular show—in the "Dotto" show we did not have that kind of pressure upon us because of the business of setting up of the dots.

I will point out to you, as a matter of fact, that on the estimate that was made before the daytime show went on the air——

Mr. MOSS. Remember, I asked you specifically about the evening show because I understood that the problem did not exist with the daytime show. But it was present with the evening show.

Mr. FISCHER. Yes. I think the same technique in computing what each dot would be worth was used in establishing the prize budget for the nighttime show as was used in establishing the prize budget for the daytime show.

My point was going to be, sir, that the projection that we made for the daytime show, the estimate, and then the additional thousand or two thousand, whatever that number was that I put on top of the estimate to be safe, came out so that we actually did not spend as much money as our estimate.

Mr. MOSS. That is not what I asked you.

You did not because you had effective control. Without the exercise of the control, you could have easily exceeded your budget, could you not?

Mr. FISCHER. Yes, we could have.

Mr. MOSS. You had a more effective control because you had contestants and you had this device of the picture which aided you in controlling?

Mr. FISCHER. Yes, indeed.

Mr. MOSS. So it was in tightening your controls in this program, because of its peculiar format, that you had a more effective control.

I say the purpose of control in part at least was to avoid exceeding budget, in part at least?

Mr. FISCHER. Yes, I agree.

Mr. MOSS. So it was a merging together of these factors which you could readily control——

Mr. FISCHER. Yes, sir.

Mr. MOSS. In the programs, and the contestants who were controlled by it, well I guess we can call it indoctrination lectures or discussions which occurred with frequency.

Mr. FISCHER. Well, yes. They all were screened.

Mr. MOSS. Some of them stayed on a number of weeks, did they not?

Mr. FISCHER. Yes.

Mr. MOSS. Was this a continuing process?

Mr. FISCHER. Yes.

Mr. MOSS. So that each time a script was drafted for a show, you would have a fairly good idea of what the developments in the show would be?

Mr. FISCHER. Yes.

Mr. MOSS. And you had to do that in order to make these controls worth while?

Mr. FISCHER. In part.

Mr. MOSS. A major part. It was not minor, was it?

Mr. FISCHER. I really don't know how to describe it.

For one thing, we were only on the air for the nighttime show for 7 weeks. There is a period of adjustment, testing, so I can't be as clear really about the nighttime show as I might be about the daytime show.

Mr. MOSS. Who were some of the people who actively participated in making these controls work, insuring their success?

Mr. FISCHER. Well, the producer. His staff of associate producers.

Mr. MOSS. How many associate producers and to what degree?

Mr. FISCHER. Let us see.

Almost everyone who had anything to do with the contestants.

Mr. MOSS. Were there a half dozen, a dozen, three, four, or what?

Mr. FISCHER. Let me figure.

There might have been about a half dozen.

Mr. MOSS. About a half dozen. And they were all authorized to meet with contestants and examine them as to their knowledge and determine what type of performer they would be on a given show. Who did they report to after they had made these determinations?

How was this coordinated to bring together the series of questions?

Mr. FISCHER. Ed Jurist. I just don't know who was assigned to what particular position. But contestants were generally screened to get a general idea of what their knowledge was, also to determine whether or not they could identify a picture upon seeing one.

We found there were many people who——

Mr. MOSS. I am talking about those qualified as contestants. They have been selected. It has been determined that they are going to be examined as to their knowledge.

Mr. FISCHER. Yes.

Mr. MOSS. As I understand, the examination went beyond that. The questions were put in order to expand their knowledge.

Mr. FISCHER. You are talking about people who had been screened, had been accepted as contestants?

Mr. MOSS. That is right.

Mr. FISCHER. And were now ready to go on the air?

Mr. MOSS. At some future date. Maybe tonight and maybe not for another week.

Mr. FISCHER. Yes.

Ed Jurist, Art Henley, were on the show at one time. We had a number of different question writers whose names I can't recall at this moment. Jerry Schnur.

Mr. MOSS. How was instruction imparted to these people as to the methods for this indoctrination procedure?

Were there staff conferences where these methods were discussed and efforts made to improve them?

Mr. FISCHER. Not that I know of. The methods of indoctrination?

Mr. MOSS. Yes.

Mr. FISCHER. Not that I know of.

Mr. MOSS. Everything is clearly understood, but it seems more a process of osmosis than anything else.

The staff knows what they are supposed to do and who has responsibility?

Mr. FISCHER. Yes.

Mr. MOSS. And how we coordinate this thing?

Mr. FISCHER. The show was coordinated through the producer.

Mr. MOSS. Then Mr. Jurist had responsibility for seeing that these individuals were properly indoctrinated?

Mr. FISCHER. All the information was brought together through—

Mr. MOSS. Then you are saying you have no knowledge how this was done. You do not know who fixed the responsibility or how it was coordinated in your organization?

Mr. FISCHER. I don't know the specific knowledge; no, sir.

Mr. MOSS. Was the master of ceremonies in on this procedure? Did he have a role to play in case something unexpected developed?

Mr. FISCHER. Not that I know of. I don't know what you mean by something unexpected.

Mr. MOSS. Did he have any extra questions that he might ask upon an appropriate signal?

Mr. FISCHER. Yes, I believe he did. The control was in effect during the playing of the show, I think. Once again I am speculating, but I believe there were some methods. Ed Jurist could better tell you than I.

Mr. MOSS. You have no familiarity with the precise methods?

Mr. FISCHER. No, sir.

Mr. MOSS. You only have a general knowledge?

Mr. FISCHER. Yes.

Mr. MOSS. These procedures met with your full approval?

Mr. FISCHER. Yes.

Mr. MOSS. That is all the questions I have.

Mr. ROGERS. Mr. Devine.

Mr. DEVINE. No questions.

Mr. ROGERS. Mr. Fischer, how many people would you say you had in mind when you told this subcommittee that your testimony in public hearing might tend to defame, degrade, or incriminate someone?

Mr. FISCHER. I didn't have any number in mind.

Mr. ROGERS. Approximately how many did you think might be affected?

Mr. FISCHER. Whatever number we have ever employed on the "Dotto" show.

Mr. ROGERS. You mean just on the "Dotto" show?

How many did you have on there?

Mr. FISCHER. Fifteen, twenty people. I don't know offhand.

Mr. ROGERS. They all knew about this?

Mr. FISCHER. I don't think so. I don't know, unless there was that same general knowledge.

Mr. ROGERS. What television station were you operating over?

Mr. FISCHER. We were broadcast over CBS.

Mr. ROGERS. Over CBS station?

Mr. FISCHER. I beg your pardon. The daytime was over CBS; the nighttime over NBC.

Mr. ROGERS. That is the station owned by those networks?

Mr. FISCHER. Yes.

Mr. ROGERS. They had employees there all the time, did they not, in this station, people employed by the owner of the station working in the station, in and around the station and the show?

Mr. FISCHER. Yes.

If I may use the descriptions that I know best myself, you are probably talking about the studio in which the show was produced.

Mr. ROGERS. Yes.

Mr. FISCHER. Yes; they had to be because the production people, that is the cameramen and all that, were NBC or CBS employees.

Mr. ROGERS. Were there any officials of any kind, any person higher in rank than the cameramen and the other people there?

Mr. FISCHER. There may have been some.

Mr. ROGERS. Was there a manager or assistant manager of that station?

Mr. FISCHER. There would be, what is the word, a unit manager who would be in charge of the production personnel.

Mr. ROGERS. He worked for NBC or CBS?

Mr. FISCHER. Yes.

Mr. ROGERS. Were you afraid you were going to defame him?

Mr. FISCHER. No, because he was generally not in on the controls employed in the handling of the contestants.

Mr. ROGERS. Have you talked to either of those networks or people connected with those networks about this hearing and what your testimony might be in it, Mr. Fischer?

Mr. FISCHER. No, sir.

Mr. ROGERS. That is your sworn testimony. You have not discussed it with anyone?

Mr. FISCHER. Yes, sir.

Mr. ROGERS. Why did you make yourself so hard to find for the grand jury in New York?

Mr. FISCHER. For the grand jury in New York?

Mr. ROGERS. Yes.

Mr. FISCHER. I did not. I volunteered.

Mr. ROGERS. To testify before the grand jury?

Mr. FISCHER. Yes, sir.

Mr. ROGERS. How long had you known that this was coming up before you volunteered?

Mr. FISCHER. For the grand jury?

Mr. ROGERS. For the grand jury.

Mr. FISCHER. From the very day that this all started.

Mr. ROGERS. From the very day it started?

Mr. FISCHER. Yes.

Mr. ROGERS. What day was that?

Mr. FISCHER. It was sometime in July or August of last year.

Mr. ROGERS. July or August of last year.

You went to the grand jury the first day that it broke?

Mr. FISCHER. I didn't go to the grand jury. I am terribly sorry. I meant to say I cooperated with the district attorney's office.

Mr. ROGERS. You cooperated with the district attorney's office?

Mr. FISCHER. Yes.

Mr. ROGERS. How long had they been hunting you when they found you?

Mr. FISCHER. I think the district attorney could tell you—forgive me. I am angered by this—they did not hunt me at all.

Mr. CAMP. Excuse me, Mr. Chairman. May I be heard on this? There is a complete misunderstanding of facts here.

Mr. ROGERS. No. I want to find out what we are doing.

Mr. FISCHER. We will straighten it out.

Mr. ROGERS. Mr. Fischer, you say you did cooperate with the district attorney's office?

Mr. FISCHER. Yes, sir.

Mr. ROGERS. Where were you first notified that the district attorney wanted to see you?

Mr. FISCHER. In my office, I imagine.

Mr. ROGERS. Did you get a telephone call or did someone come down there with a subpoena?

Mr. FISCHER. No; I was not subpoenaed.

Mr. ROGERS. Did someone call you? How did you know about it?

Mr. FISCHER. I think the first arrangement that was made for me to go downtown, they either called me at the office or they spoke with Mr. Camp. But I also made myself available and our entire office did, sir.

Mr. ROGERS. You only had one request from the district attorney to come to his office, and you went?

Mr. FISCHER. I think I went twice.

Mr. ROGERS. You went twice. But you went every time he summoned you?

Mr. FISCHER. Yes; like a shot.

Mr. ROGERS. Did you go into this matter fully at that time?

Mr. FISCHER. Yes, sir.

Mr. ROGERS. Did you tell the truth there, Mr. Fischer?

Mr. FISCHER. Yes, sir.

Mr. ROGERS. The same story you have told here?

Mr. FISCHER. The same story I have told ever since this started.

Mr. ROGERS. Did you go before the grand jury?

Mr. FISCHER. No, sir.

Mr. ROGERS. Why didn't you?

Mr. FISCHER. I did go before the grand jury.

Mr. ROGERS. Did you testify before the grand jury?

Mr. FISCHER. I did not testify before the grand jury.

Mr. ROGERS. Why didn't you?

Mr. FISCHER. I was requested to sign a waiver of immunity.

Mr. ROGERS. You were requested to sign a waiver of immunity?

Mr. FISCHER. Yes, sir.

Mr. ROGERS. Did you do that?

Mr. FISCHER. No, sir.

Mr. ROGERS. Did you feel that you could not testify safely if you did sign the waiver of immunity?

Mr. FISCHER. I refused to sign the waiver of immunity, sir, because for one thing, on the advice of counsel, but I suppose I can just leave the reason right there, saying on the advice of counsel. But I don't choose to because my attitude, demeanor, feeling, has been always to give you people or anybody else anything that you would like to know that can illustrate to you our feelings.

Mr. ROGERS. Have you ever talked to the investigators for this subcommittee?

Mr. FISCHER. No, sir.

Mr. ROGERS. Have you been requested to talk to them?

Mr. FISCHER. That matter has been handled entirely by Mr. Camp.

Mr. ROGERS. How do you know it has?

Mr. FISCHER. Because Mr. Camp told me so.

Mr. ROGERS. Have the investigators ever talked to you?

Mr. FISCHER. No, sir.

Mr. ROGERS. Did you ever at any time make yourself available to the investigators of this subcommittee?

Mr. FISCHER. Sir, I never made myself unavailable. I must tell you—

Mr. ROGERS. That is all right. We will ask you in reverse.

Did you ever make yourself available? You said you made yourself available to the district attorney. Did you ever made yourself available to the investigators of this subcommittee?

Mr. FISCHER. When I was called by Mr.—I forgot his name—from Washington, and I was not in the office, when I came back I found the message and I immediately called my attorney. Each time that I have had a call, and there have been two or three occasions that I have been called by one of the people from your committee, I have immediately called Mr. Camp who immediately, I am told by Mr. Camp—it was Mr. Goodwin—got in touch with Mr. Goodwin.

I must say that the first time I was called by Mr. Goodwin, I came back to the office from an appointment, I found the message and it said a Mr. Goodwin called. There was no return number. There was no request to call.

Mr. ROGERS. Did you know who it was?

Mr. FISCHER. No; I did not.

Mr. ROGERS. Why did you call your attorney?

Mr. FISCHER. I didn't call him at that time because there was nothing to call him about.

Mr. ROGERS. Go ahead.

Mr. FISCHER. I can't remember the first time I called Mr. Camp. Perhaps he can best tell you. I have not tried to avoid anything here.

Mr. ROGERS. We will determine that. I appreciate your conclusion.

Did either of the investigators, two or three or one, ever come out to your house?

Mr. FISCHER. No, sir.

Mr. ROGERS. Did you ever know who Mr. Goodwin was?

Mr. FISCHER. Yes; of course.

Mr. ROGERS. How did you find that out?

Mr. FISCHER. He told my secretary.

Mr. ROGERS. He called your secretary?

Mr. FISCHER. He told my secretary.

Mr. ROGERS. He identified himself?

Mr. FISCHER. Yes.

Mr. ROGERS. You say they never went to your house, a Mr. Martin or Mr. Goodwin?

Mr. FISCHER. No, sir.

Mr. ROGERS. Never at any time?

Mr. FISCHER. Wait a second; excuse me.

I have never been told that they came to my house.

Mr. ROGERS. Did you know they came to your house?

Mr. FISCHER. No, sir.

Mr. ROGERS. Do you know now whether or not they came to your house?

Mr. FISCHER. Absolutely not, sir.

Mr. ROGERS. You have never been told that by anybody?

Mr. FISCHER. No, sir.

Mr. ROGERS. Did you make a trip to Europe?

Mr. FISCHER. Yes, sir.

Mr. ROGERS. When did you go?

Mr. FISCHER. About a year ago.

Mr. ROGERS. About a year ago. Was it before or after the investigation started?

Mr. FISCHER. It was after.

Mr. ROGERS. After the investigation started?

Mr. FISCHER. Wait a minute now. Excuse me, sir. I have made several trips and I must remember.

Mr. ROGERS. The truth is what I want.

You promised if we had this in executive session you would tell all.

Mr. FISCHER. I will tell the truth in executive session or in a public hearing.

Mr. ROGERS. Let us do that now.

Mr. FISCHER. Or any place else, sir.

Mr. ROGERS. Let us do it then.

Now, about the European trip?

Mr. FISCHER. I went to Europe at the beginning of 1958. Yes, I went after the show went off the air, after the "Dotto" program went off the air.

Mr. ROGERS. After the "Dotto" program went off the air?

Mr. FISCHER. Yes.

In connection with that, I did not go, however, until I notified Mr. Camp to notify the district attorney and ask them if it was OK for me to go.

Mr. ROGERS. Did the district attorney tell you it was all right for you to go?

Mr. FISCHER. Yes, indeed. I would not have gone otherwise.

Mr. ROGERS. Who told you that? The district attorney or Mr. Camp?

Mr. FISCHER. Mr. Camp.

Mr. ROGERS. Mr. Camp relayed the message to you from the district attorney?

Mr. FISCHER. Yes, sir.

Mr. ROGERS. At that time did you know that the investigators of this subcommittee were hunting for you, too?

Mr. FISCHER. The investigators of this subcommittee were not hunting for me at the time I went to Europe. That was last year.

Mr. ROGERS. Mr. Goodwin.

Mr. FISCHER. I went to Europe last year.

Mr. ROGERS. You say they were not hunting for you at that time?

Mr. FISCHER. No, sir. The first time I heard from Mr. Goodwin was just a few weeks ago.

Mr. ROGERS. Just a few weeks ago?

Mr. CAMP. Can I give you a date?

Mr. ROGERS. You wait, Mr. Camp.

The first time that you heard from Mr. Goodwin or anyone connected as an investigator of this subcommittee was just a few weeks ago, you say?

Mr. FISCHER. Yes, sir.

Mr. ROGERS. What did you hear from him first?

Mr. FISCHER. That he wanted to talk to me, as best I can remember. He identified himself through my secretary. I have never spoken with him, incidentally.

Mr. ROGERS. I know that.

Mr. FISCHER. I got this from my secretary, that he identified himself to my secretary, who told me in turn who he was and that he wanted to speak with me, at which time I spoke with Mr. Camp. I called Mr. Levine.

Mr. Camp then spoke with Mr. Goodwin or Mr. Martin.

Mr. ROGERS. Were you told not to talk to Mr. Goodwin or Mr. Martin?

Mr. FISCHER. Was I advised by my counsel not to?

Mr. ROGERS. That is right.

Mr. FISCHER. I must say this: I was told earlier today, another piece of law I am learning, that I need not disclose to the committee any of my conversations with counsel.

Mr. CAMP. Answer every question. Answer it.

Mr. FISCHER. I was told not to talk.

Mr. ROGERS. You were told not to talk with Mr. Goodwin?

Mr. FISCHER. Yes.

Mr. ROGERS. Several weeks ago?

Mr. FISCHER. This is out of context.

Mr. ROGERS. I do not know about it, Mr. Fischer. So you get it in context.

Mr. FISCHER. I am trying to explain it.

When Mr. Goodwin first called me and I spoke with Mr. Camp and Mr. Camp spoke with Mr. Goodwin, he came back to me and said he wants to meet with me. He wants to talk to me about "Dotto", the now defunct "Dotto" program as it is now known.

I said shall we talk? What is the purpose in our having any conversation? There was no purpose that we could see at that time.

I have to be clear on this. I will tell you, sir, it is a little difficult on the actual conversations because I have been under a great deal of strain in these past few weeks. I suppose I might think more clearly about some things that happened a year or a year and a half ago because I have been going over them so thoroughly. I must say that I left everything in Mr. Camp's hands in his dealings with Mr. Goodwin.

I am referring only to a period of about a week until such time as Mr. Goodwin arranged with Mr. Camp for me to come here to appear, which was Wednesday at 10 o'clock.

Mr. ROGERS. Of this week?

Mr. FISCHER. Yes, sir.

Mr. ROGERS. Today is the first time——

Mr. FISCHER. I beg your pardon. It comes back as we go. I am sorry.

Mr. ROGERS. It is all right. Let us get it straight.

Mr. FISCHER. I am sorry to be confused about it.

I think that Mr. Camp and Mr. Goodwin spoke on Thursday or Friday of last week and then they determined between them that I could meet with Mr. Goodwin when we came here to Washington. It just occurs to me, are you Mr. Goodwin?

Mr. GOODWIN. Yes, I am.

Mr. FISCHER. That we would call Mr. Goodwin when we arrived in Washington on Tuesday night.

Mr. ROGERS. In other words, you were choosing the time and place when you talked to any investigator of this subcommittee, were you not, Mr. Fischer?

Mr. FISCHER. It is a pretty loaded question, sir.

Mr. ROGERS. What?

Mr. FISCHER. I was not choosing the time and place.

Mr. ROGERS. You said you were going to call him when you got here and you had not talked to him before, and you knew he wanted to talk to you, didn't you?

Mr. FISCHER. No; I didn't say that. I said Mr. Camp advised me that he and Mr. Goodwin had agreed that we would meet on Tuesday night when we came to Washington.

Mr. ROGERS. You never made any overtures to get in touch with Mr. Goodwin or Mr. Martin?

Mr. FISCHER. Overtures?

Mr. ROGERS. Yes; or any efforts.

Mr. FISCHER. After he originally contacted——

Mr. ROGERS. Any time.

Mr. FISCHER. After he originally contacted me we were in constant touch with him.

Mr. ROGERS. You say we. I am talking about you, Mr. Fischer. The first time you ever talked to anybody on this committee or anybody connected with it is today, isn't it?

Mr. FISCHER. Was today?

Mr. ROGERS. Yes.

Mr. FISCHER. Yes.

Mr. ROGERS. That is when you came in and asked for an executive session because you were afraid you were going to defame or degrade someone, wasn't it?

Mr. FISCHER. There is only one reason I have not spoken with Mr. Goodwin or anybody else.

Mr. ROGERS. Let us have it. I was coming to that.

Mr. FISCHER. Because I was being represented by counsel and counsel was talking for me. That is the only reason.

Mr. ROGERS. Were you afraid to talk to Mr. Goodwin or anyone investigating this matter?

Mr. FISCHER. No, sir. But if I have counsel and that is his job he is best qualified to do it. I have nothing to hide. I don't have a darn thing to hide, sir. I have been going back and forth between here and New York. I have been stacked up over Philadelphia for a couple of hours this afternoon.

Mr. ROGERS. Mr. Fischer, I have been in the same condition for the last 2 months and I can tell you that I am pretty tired myself. I feel sorry for you.

Mr. FISCHER. Don't feel sorry for me.

Mr. ROGERS. I was up until 1:30 this morning trying to get information.

Mr. FISCHER. I was up to 4:30 this morning going to my family and I returned without any sleep. We are doing it for the same reason. There is information you require and there is information I want to give you.

Mr. ROGERS. We want to get the truth if it. At the time you were doing all of this that you related to this subcommittee did you consider that fraudulent or questionable practice?

Mr. FISCHER. No.

Mr. ROGERS. You did not?

Mr. FISCHER. Consider it as being fraudulent?

Mr. ROGERS. Yes; fraudulent or dishonest or questionable. Not exactly fair and honest.

Mr. FISCHER. Absolutely not.

Mr. ROGERS. You did not?

Mr. FISCHER. Absolutely not.

Mr. ROGERS. Then by that you mean you considered it fair and honest what you were doing?

Mr. FISCHER. I must tell you, sir, that I have behaved as regards this committee on the advice of counsel.

Mr. ROGERS. I am not talking about that. You are not answering the question, Mr. Fischer. I am asking you if you consider the activities you were engaged in in the "Dotto" show as fair and honest activities?

Mr. FISCHER. I am sorry. We have been batting about this for the last 5 minutes.

Mr. ROGERS. We have been on several subjects.

Mr. FISCHER. Forgive me. I thought you were talking about the trip.

Mr. ROGERS. That is all right, if you answer the question.

Mr. FISCHER. You are saying did I feel that the function of the "Dotto" show was fair and honest?

Mr. ROGERS. Yes.

Mr. FISCHER. Within the framework of my business, within the framework of my responsibility to provide an entertainment program to a sponsor who pays me for it, I do.

Mr. ROGERS. You mean there is some question about the honesty of the framework of your business?

Mr. FISCHER. No.

Mr. ROGERS. Isn't the thing honest or dishonest?

Mr. FISCHER. I don't think it is dishonest, sir.

Mr. ROGERS. Did you feel that this was tainted to any degree insofar as honesty was concerned?

Mr. FISCHER. I have to take the connotation of dishonesty to mean for evil intent, for ill gain. There was nothing that anyone connected with my program gained by the use of controls in the show, nor was anyone deprived of anything. We were trying our best to do an entertainment show.

Mr. ROGERS. All right. Now, if that is the way you justify it, aren't you saying in effect that you would do the same identical thing today if you had the chance?

Mr. FISCHER. I absolutely would not.

Mr. ROGERS. Why not?

Mr. FISCHER. Because of precisely what has happened in the last couple of years.

Mr. ROGERS. You mean because you got caught?

Mr. FISCHER. No, sir.

Mr. ROGERS. You mean because of bad publicity and you would not be able to sell it.

Mr. FISCHER. No, sir.

Mr. ROGERS. What do you mean?

Mr. FISCHER. I am in a business of theatrics.

Mr. ROGERS. Yes, sir.

Mr. FISCHER. Once the theatrics are no more realistic or usable there is absolutely no point in trying to use them. It would be like going on the television stage today using one camera rather than three because we have not found another system of doing it. I would say further, sir, if a quiz program, an audience participation program, any kind of show can be described where controls are not required, and where the information or whatever other kind of skill an ordinary lay person has can be used, that would be marvelous. Indeed they may have been devised. I don't think any more will be devised.

Mr. ROGERS. Mr. Fischer, what you are saying in effect is this: That if the truth of this whole thing had not been aired to the public you would still be willing to be in the business of running the "Dotto" show.

Mr. FISCHER. Yes, sir.

Mr. ROGERS. That is all. Are there any more questions?

Mr. SPRINGER. None.

Mr. FLYNT. None.

Mr. CAMP. I beg your pardon, sir, may I be heard in fairness not only to my client, Mr. Fischer, but to clear the air with respect to what is quite apparently a misconception of facts and events?

Mr. ROGERS. Mr. Camp, let me say this and let me call to your attention one thing. This man is a witness. He is a witness and he is entitled to counsel. He is entitled to talk to his lawyers. We are not trying a lawsuit. A lawyer is not allowed to come in here and make a case out by argument for or against the witness. We will determine that.

Mr. FISCHER. Then may I?

Mr. CAMP. Excuse me, sir. I understand all that you say. But out of a sense—my sense—of complete fairness, I believe that you were under a misapprehension of facts, and I think you are entitled to know them, sir.

Mr. SPRINGER. There is one thing that the rules do not allow. You are out of order. The rules do not allow you what you are doing.

Mr. ROGERS. Mr. Camp, this is not that type of proceeding. I would be glad, if you want to submit something to me, it would be fine and dandy.

Mr. CAMP. May I speak off the record?

Mr. ROGERS. We have other witnesses to be heard and we cannot allow an argument to go here that will consume a lot of time.

Mr. FLYNT. Let me ask one thing.

Mr. Fischer, one thing that concerns me and I know concerns members of the committee and committee staff, you knew that Mr. Goodwin and Mr. Martin, another investigator on the committee staff, were trying to see you?

Mr. FISCHER. Yes.

Mr. FLYNT. And you would not see them?

Mr. FISCHER. Yes.

Mr. FLYNT. And you would not see them?

Mr. FISCHER. They wanted to—

Mr. FLYNT. Would you or would you not see them?

Mr. FISCHER. I did not avoid seeing them. I avoided having an interrogation before this meeting. Yes. The answer to that is that I didn't want to have an interrogation before this meeting. I didn't avoid contact with Mr. Goodwin. If Mr. Camp—I think he is upset and I am.

Mr. ROGERS. Mr. Fischer, I cannot help it if Mr. Camp is upset or Mr. Levine is upset. As a matter of fact, they are here by our graciousness, that is all.

Mr. FISCHER. If you want them to leave the room, they can leave the room.

Mr. ROGERS. No. I want them right here and I want reference to stop being made to them because they are not before this committee. Neither one is sworn. They are not giving any kind of testimony. You are the witness.

Mr. FISCHER. Let me try to explain as best I can.

Mr. FLYNT. Answer and explain.

Mr. FISCHER. What is it you would like to know?

Mr. FLYNT. Why did you avoid seeing Mr. Goodwin and Mr. Martin.

Mr. FISCHER. I did not want to spend more time than I have already had to spend on this affair. I have been under tremendous pressure at home. If it was not absolutely necessary to have the meeting, especially when I knew I was coming here, I felt quite prepared to tell Mr. Goodwin that I would make whatever arrangements we could with him to get together at a more convenient time.

Mr. FLYNT. Did you ever talk to Mr. Goodwin a single time when he called on you?

Mr. FISCHER. No, sir. Nor did I feel it necessary for me to, inasmuch as my attorney was in constant touch with him. I didn't try to avoid him.

Mr. FLYNT. Couldn't you see him and tell him you did not want to talk to him outside the presence of your attorney?

Mr. FISCHER. Sir, for one thing—

Mr. FLYNT. No, could you have done that?

Mr. FISCHER. No. Each time he called me I was not in the office. There was no time I can recall that he called and my secretary came in and said there is a Mr. Goodwin on the phone and did I say I am not in. Each time he has contacted me, come to my office, found a message, called Camp, and said Mr. Goodwin or Mr. Martin has called and let him know the score. There is no need on my part to avoid Mr. Goodwin. There is no need for me not to talk to him. I don't think I will talk to anybody any more without having an attorney with me. I am scared to death of not taking recourse to legal assistance in areas in which I have absolutely no knowledge.

I find it hard to understand why you fault me, gentlemen, for everything my attorney, who was in constant touch with your interrogator, speaks for me.

Mr. FLYNT. Do you think you are being frank, honest, and cooperative with this committee when on numerous occasions members of the committee staff tried to get in touch with you to discuss with you what your testimony would be and on each occasion you thwarted their efforts to find you and discuss it with you?

Mr. FISCHER. I can't give you an honest answer to that without giving it thought. I know you don't want a letter from me to that effect. I cannot give you an honest answer, to tell you that I welcomed the opportunity of sitting down with Mr. Goodwin or anybody else prior to that time when I was going to meet with you people here.

Mr. FLYNT. I did not ask you whether you welcomed it. Mr. Reporter, read the question back. I thought it was a clear question. (Question read.)

Mr. FISCHER. I have to say, sir, that I do, in that I have been functioning under the advice of legal counsel from the day that I first heard from Mr. Goodwin. I was handled by my attorney much the way I handle one of my clients, where it is his responsibility to me to handle me as he sees fit, as I handle my people.

Mr. FLYNT. I didn't ask you whether you were doing what you thought was for your best interests. I asked you whether you considered yourself being frank, fair, and cooperative with this committee. I will go further. You are not under any obligation to do it unless you want to. You have told us you wanted to be frank with us and give us all the information we wanted. I ask you if you consider you have done so.

Mr. FISCHER. I think I have been frank, honest, and fair.

Mr. ROGERS. Are there any other questions?

Mr. FISCHER. I really can't describe what discussions took place between Mr. Goodwin and Mr. Camp.

Mr. ROGERS. We will get at that from them.

Mr. FISCHER. Except that I am under the impression that a meeting was arranged and was attempted to be arranged as late as the end of last week.

Mr. ROGERS. We will get into that.

Mr. Fischer, if you want to make a final statement on the subject you have a right to do so on the record and you will be allowed to do so and you may proceed to do it.

Mr. FISCHER. It is not necessary for me to do so except that I am shocked to hear that Mr. Flynt feels that I have not given answers to the questions you have put to me.

Mr. CAMP. May we have a conference at this point to decide whether he would want to make a statement or not, sir?

(Witness consulted with his counsel.)

Mr. ROGERS. Mr. Goodwin has one more question.

Mr. GOODWIN. Mr. Fischer, numerous times the statement has been made to us in the course of these investigations that nobody gained by controlling quiz shows. You say that controlling quiz shows was an essential element of producing a good salable production.

Mr. FISCHER. I don't, sir. I say as it related to "Dotto." To a program.

Mr. GOODWIN. To "Dotto"?

Mr. FISCHER. Yes.

Mr. GOODWIN. You are in the business of—art of the source of your income is producing quiz shows—is it not?

Mr. FISCHER. You are quite right. I don't know what you are going to say, but naturally the success of the show abounds to me. Of course.

Mr. GOODWIN. In other words, the purpose of these controls was to produce a show which would return a high income value to the people who owned it?

Mr. FISCHER. I can't relate it to that alone. I have pride in my career. I don't want to put on a dull piece of foolishness that has no meaning.

Mr. GOODWIN. All I am trying to ascertain, at least profit was one of the motives for producing a fraudulent quiz show.

Mr. FISCHER. In addition to entertainment.

Mr. GOODWIN. Thank you.

Mr. ROGERS. Are there any further questions?

If not, you may be excused, Mr. Fischer, and Mr. Camp and Mr. Levine.

Mr. FISCHER. Thank you, sir.

(Whereupon, at 7:05 p.m. the committee proceeded to the consideration of other business.)

The special subcommittee met in executive session at 7:20 p.m., in the caucus room, Old House Office Building, Hon. Walter Rogers (presiding), a quorum being present.

(The testimony taken at this executive session was released by the subcommittee by vote taken November 3, 1959.)

Mr. ROGERS. The committee will be in order.

Mr. Jurist, you understand that you were placed under oath earlier and that you are still under oath and you are here, as I understand it, to request a supplemental statement, supplementing your other statement, be placed in the record.

TESTIMONY OF EDWARD JURIST—Resumed

Mr. JURIST. The request was made of me and I complied with it.

Mr. ROGERS. The request was made of you to furnish the statement?

Mr. JURIST. Yes, sir.

Mr. ROGERS. Is it in order to be placed in the record at the proper place, Mr. Lishman?

Mr. LISHMAN. I have not seen it, but I assume it is. Yes, sir. It is a verified statement which the committee may determine.

Mr. ROGERS. Without objection the statement will be received and be placed in the record at the point Mr. Lishman requested that pages of the grand jury proceedings in New York be placed in the record and Mr. Lishman's request will be stricken and this statement will be included at that point in lieu thereof and in lieu of the grand jury record.

Mr. LISHMAN. In the record of the executive session.

Mr. ROGERS. The record of the executive session while Mr. Jurist was under examination.

Mr. LISHMAN. Mr. Chairman, it is understood that this is an independent statement which was prepared here today, each page of which has been read by Mr. Jurist. To the best of his knowledge and information and belief it is correct.

Is that correct, Mr. Jurist?

Mr. JURIST. Yes, sir.

Mr. ROGERS. Is there any objection to the insertion in the record at this point of the testimony of Mr. Jurist as related?

If not, it is so ordered and the record will so show.

(The statement of Mr. Jurist follows:)

INTERROGATION OF MR. EDWARD JURIST BY CHARLES P. HOWZE, JR., ATTORNEY FOR THE HOUSE SPECIAL SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT, OCTOBER 8, 1959, IN ROOM 1334, HOUSE OFFICE BUILDING, WASHINGTON, D.C.

Q. Mr. Jurist, will you please state your name and address.—A. Edward Jurist, 311 North Alpine Drive, Beverly Hills, Calif.

Q. You understand that the questions you are about to be asked will supplement the testimony given by you in an executive session of the House Special Subcommittee on Legislative Oversight in room 1334, New House Office Building, Washington, D.C., on October 8, 1959, beginning at 1:30 p.m.?—A. Yes, I do.

Q. What was the name of the corporate entity which produced the "Dotto" program?—A. Marjeff, Inc.

Q. Was Marjeff, Inc., a corporation wholly owned by Frank Cooper Associates?—A. As far as I know.

Q. Were you an employee of Marjeff, Inc.?—A. Yes, I was paid by them.

Q. In what way did people apply to become contestants on the Dotto program?—A. There were several ways. One way we got contestants was in the audience that attended the telecast itself. We had questionnaires given to each individual in the audience and these were filled out, with some key questions thereon which would reveal to us whether they were potential contestants or not, such as education, occupation, and general remarks. These people were then interviewed cursorily after the performance by my staff.

Q. All people in the studio audience?—A. No, those who proved to be possibilities were interviewed briefly by my staff and if they thought there were any possibilities I met them, and later we brought them to an interview session at a studio, together with the applicants found by a member of my staff whose sole job it was to comb likely places for such potential candidates.

Q. What was the name of the staff member?—A. Diane Lawson.

Q. Diane Lawson was an employee of Marjeff, Inc.?—A. She was paid by them either as a freelance worker or an employee. I really don't know. At this session each person was given a written test to fill out, also given a test on ability to recognize cartoons or caricatures of celebrities, and was interviewed by the entire staff with the view toward seeing what his personality was like under pressure.

Q. Where did these interviews occur?—A. At Steinway Hall.

Q. Is that where the show was produced?—A. No, the room was rented for this purpose alone.

Q. How large would a typical group of contestants be in an interviewing session?—A. Twenty to thirty.

Q. How often were these sessions held?—A. Once a week.

Q. Which of your staff members participated in the interviewing of prospective contestants?—A. Art Henley, Stan Green, Diane Lawson, Gil Cates, myself, and some of the office staff to help with the clerical end of it.

Q. Was Mr. Jerome Schnur ever present at these interviews?—A. Only when, much later, he became producer of the daytime show.

Q. Can you identify Mr. Schnur for the record?—A. He was the director of both shows.

Q. Was Mr. Sy Fischer ever present at these meetings?—A. I don't recall any instance in which he was present.

Q. Out of 30 applicants at this first screening, how many would likely be selected for a further screening?—A. Well, it wasn't a question only of selecting them for further screening—there was the question of the upcoming shows, the question of keeping a file of people under a certain set of circumstances to oppose other people.

Q. Let me put it this way. If an applicant survived this first screening, would he be a potential contestant?—A. I would say we could find out enough about him when we looked at his score and were able to gauge his personality—on the average, probably out of the 30 people you were lucky if you got 4 or 5.

Q. Once an individual had been selected to be a contestant, did he have further interviews with members of the Marjeff, Inc., staff?—A. Yes.

Q. Who would conduct these?—A. Stan Greene for the daytime show and Gil Cates for the nighttime show.

Q. Could you describe what would go on in those interviews?—A. As I said in my testimony, they would try to find out as much as a person knew with regard to his information.

Q. How soon after the second screening would these contestants appear on the program?—A. Depending on circumstances, sometimes immediately and sometimes not for several weeks.

Q. Days or weeks?—A. It would vary.

Q. Would questions often be devised on the basis of these interviews?—A. Yes.

Q. Once a contestant had appeared on the "Dotto" program, would he participate in subsequent interviews prior to the airing of future programs?—A. Yes. It was a routine matter first of all, to go over what we call the interview material—that dialogue which preceded the actual questioning.

Q. The "spontaneous interviews"?—A. Actually those interviews were based on remarks the contestants themselves had made, or facts about their life.

Q. Are not these interviews called, in the trade, the "spontaneous interviews"?—A. Not in my trade.

Q. As you have testified before the subcommittee, is it correct to say that a principal purpose of the interview was to determine what a contestant did and did not know, his strengths and weaknesses?—A. Yes, also to get material for the personal interviews.

Q. Were questions on the program sometimes framed in the hope that the contestant would miss the question?—A. Yes.

Q. From your point of view as producer, what purposes were served by asking a contestant questions it was hoped that he would miss?—A. Aside from the obvious purpose of establishing a winner, a "miss" question was used to balance the contest—to make it more exciting, the competition keener, and, in addition, to provide tying contests.

Q. Conversely, a desirable contestant could be perpetuated on the program by being asked questions you felt fairly sure he could answer?—A. Yes, although one could be wrong, but not often.

Q. Were contestants asked questions on the show which they had been asked by members of your staff in prior interviews?—A. I would say "yes," but if it were done properly they would not be aware of it.

Q. Was it your goal in this respect to be so subtle that the contestant would not be aware of the assistance he was receiving?—A. That was the aim.

Q. On some occasions was it felt necessary to provide more direct assistance to a contestant?—A. It was never my instructions to give answers to questions, but rather to cover the ground with the contestant in such an indirect way, and I guess I am repeating myself, in such a way that the contestant really would not be aware of it. However, in the press of a daily routine it is apparent that some shortcuts were taken.

Q. Will you enlarge on what you mean by "shortcuts"?—A. Apparently there were instances as indicated in the case of Marie Winn and others, indicated by

testimony which you have recited to me, which indicate that some of the methods used were not the most subtle in the world.

Q. By which you mean that on some occasions contestants were given answers by Mr. Cates or Mr. Greene prior to their appearance on the program?—A. Yes, and I am sure only because of some press and not because they were not up to the subtle method.

Q. You have referred to the fourth question on the card, a more difficult question than the others, being used to "balance" the show. Was this to bring about ties?—A. Ties, and to balance the competition and make it more keen.

Q. Will you explain what you mean by "balancing" the competition?—A. Making it a closer match—making it last longer.

Q. In order to heighten the tension?—A. The drama.

* * * * *

Q. Mr. Jurist, you have testified before the subcommittee as to the demands made by Mr. Hilgemeier and the settlement reached with him. Do you recall a meeting, subsequent to the settlement with Mr. Hilgemeier, on or about August 8, 1958, at the Marjeff offices where you and others connected with Marjeff, Inc., or Frank Cooper Associates met to discuss what action to take with respect to Ted Bates Agency, the sponsor, and the CBS television network.—A. Yes.

Q. Had representatives of Ted Bates Agency and CBS requested a meeting with Marjeff personnel to discuss the disposition of the "Dotto" program?—A. They obviously must have, because they did meet, but I was not present.

Q. Were you present at the meeting of Marjeff personnel?—A. Part of it.

Q. Who else was present at that meeting?—A. Frank Cooper, Sy Fischer, Jerome Schnur, and Walter Scheier.

Q. Will you identify Mr. Walter Scheier?—A. He was the attorney for Frank Cooper Associates.

Q. Who was Mr. Sy Fischer?—A. Sy Fischer is the head of the New York office of the Frank Cooper Associates.

Q. What is Frank Cooper's function in Frank Cooper Associates?—A. My guess is, he is the owner of it.

Q. Where are his headquarters?—A. In Hollywood.

Q. Was Miss Marie Winn discussed in connection with Mr. Hilgemeier's charges?—A. Yes.

Q. Was it decided at that meeting that Miss Winn should appear at the Marjeff offices later the same day?—A. Yes, it was decided, but I don't know by whom. Or, to put it more accurately, I believe she was there when I got there. I don't recall. Not at the meeting—she was at the offices.

Q. Why was Miss Winn there?—A. I think either the client's attorneys or the network's attorneys or both wanted to question her.

Q. About the Hilgemeier charges?—A. Yes.

Q. Do you recall any discussion?—A. Yes.

Q. Do you recall any discussion as to what Miss Winn might say to representatives of the Ted Bates Agency and CBS?—A. I recall this, that we were obviously in a state of agitation over the whole matter and that someone—I don't recall who—brought us the information or repeated to us that Miss Winn said she had only written down those answers after the show, in order to relate the experience to a relative.

Q. Do you recall who made that statement?—A. I think it was Diane Lawson.

Q. Did you believe that statement to be true?—A. Well, I certainly wanted to believe it.

Q. Did you believe it?—A. At the time I probably did, yes.

Q. To your knowledge, did anyone at the meeting question the accuracy of Miss Lawson's statement that Miss Winn wrote down answers in her notebook only after the program?—A. I really do not recall. My impression is that it was probably like clutching at a straw. Wouldn't it be wonderful if suddenly we were wrong all along, and this is what she really had done.

Q. Do you believe Mr. Hilgemeier's charges to be essentially true?—A. I do now.

Q. Did you then?—A. When?

Q. At the meeting. I am not implying that Mr. Hilgemeier made charges at this particular meeting or was present. Did you, at the meeting under discussion, believe that Miss Winn wrote answers in her notebook prior to the program rather than afterward?—A. I think I have already explained that.

When I first heard about it I came to the same conclusion that Hilgemeier did. When I heard this other explanation I wanted to believe it, so I did.

Q. That was wishful thinking on your part?—A. Perhaps. Obviously, it appears to be now.

Q. Did anyone to your knowledge instruct Miss Winn as to what she should tell the Ted Bates Agency and CBS representatives?—A. Not to my knowledge.

Q. Did Miss Winn, later that day or in the evening, meet with representatives of the Ted Bates Agency and CBS at the offices of Marjeff, Inc.?—A. Sometime that day.

Q. Subsequent to the meeting under discussion?—A. Yes.

Q. Do you know what Miss Winn in fact told the representatives of the Ted Bates Agency and CBS?—A. No, I don't.

Q. You have no knowledge?—A. I don't know.

Q. Have you since learned what she told them?—A. No. I did learn what she told the Grand Jury from Mr. Stein of the New York County District Attorney's office.

Q. What did Mr. Stein tell you she said?—A. I don't recall exactly what he said, but the substance of it was that in fact she had written the answers down before the show.

Q. Did Mr. Stein tell you what she told the representatives of Ted Bates Agency and CBS?—A. I don't recall.

Q. Do you remember the names of the representatives of CBS and Ted Bates Agency present at the meeting with Miss Winn?—A. No.

Q. Would it refresh your recollection to learn that they were Mr. Tom Fischer and a Mr. Frothingham?—A. I recall the name Frothingham.

Q. Were you present at the meeting with Mr. Frothingham and the representative of CBS?—A. With Miss Winn? No.

Q. Was Mr. Fischer present at that meeting?—A. I believe, my memory is that only those two gentlemen and perhaps Mr. Scheier.

Q. Was Diane Lawson present at that meeting?—A. Not to my knowledge.

Q. Do you know whether Ted Bates Agency and CBS made any investigation into the Marie Winn matter?—A. I don't know about that specifically. I was told that they were making an investigation, which I assumed to be general.

Q. By general, what do you mean?—A. Into the practices of the show.

Q. The "Dotto" show?—A. Yes.

Q. Was the "Dotto" show replaced soon after the meetings of August 8?—A. Yes, it was.

Q. Do you recall the exact date it was replaced?—A. All I know is it was a Friday.

Q. A week, 2 weeks?—A. I think it was a week or 2 weeks later.

Q. Why was "Dotto" replaced, to your knowledge?—A. Because of the unfavorable publicity which stemmed from Hilgemeier going to the press, and the reflection on the agency and the network.

Q. Have you any knowledge that the agency, the network or the sponsor believed the Hilgemeier charges to be true?—A. Well, I have the most direct knowledge in the world—they canceled the show.

Q. Did anyone from the agency, the network or the sponsor inform you that they believed the Hilgemeier charges to be true?—A. No.

Q. You merely drew the obvious inference?—A. Yes.

Q. Did Mr. Frank Cooper know that the "Dotto" program was a controlled show?—A. I presumed he did.

Q. Was he aware of the extent of the controls?—A. I don't think he knew any of the details.

Q. Did he have anything to do with the production of "Dotto"?—A. When I was involved with it?

Q. Yes.—A. Nothing.

Q. Had he been concerned with the production details before you were associated with the show?—A. They did a kinescope.

Q. In California?—A. In California—and I would assume that Frank Cooper had something to do with that.

Q. To your knowledge were controls used on that kinescope?—A. I know nothing about it.

Q. Was Sy Fischer involved in the production details of "Dotto"?—A. On a supervisory or consultant level.

Q. Did he know the show was controlled?—A. Yes.

Q. Did he know the extent of the controls which were occasionally found necessary?—A. If you mean those unfortunate times when direct answers were clumsily given, I don't know whether Sy Fischer knew or not.

Q. I refer to the time before the Hilgemeier revelations.—A. Yes.

EDWARD JURIST.

Sworn and subscribed to before me this 8th day of October 1959.

KENNETH J. PAINTER,
Notary Public.

My commission expires August 31, 1962.

Mr. LISHMAN. Do you have any further statement to make?

Mr. JURIST. No, except I would like to emphasize again the point I made to begin with, that I would appreciate every effort to avoid any public reference to my testimony or to my name because of the jeopardy in which it would place me.

Mr. ROGERS. Thank you, sir.

Are there any questions?

If there is no further testimony before the subcommittee it will stand recessed until 10 a. m. in the morning.

(Whereupon, at 7:30 p.m., the hearing in the above-entitled matter was recessed, to be recessed, to be reconvened at 10 a. m., on the following day.)

INVESTIGATION OF TELEVISION QUIZ SHOWS

FRIDAY, OCTOBER 9, 1959

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT,
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The special subcommittee met at 10 a.m., in the caucus room, Old House Office Building, Hon. Oren Harris (chairman) presiding.

Present: Representatives Harris (presiding), Mack of Illinois, Rogers of Texas, Flynt, Moss, Springer, Derounian, and Devine.

Also present: Robert W. Lishman, counsel to the subcommittee; Beverly M. Coleman, subcommittee principal attorney; Charles P. Howze, subcommittee attorney; Richard N. Goodwin, subcommittee special consultant; Herman Clay Beasley, subcommittee clerk; and Jack Marshall Stark, minority counsel.

The CHAIRMAN. The committee will be in order.

The first witness this morning will be Mr. Richard Pinkham, vice president of Ted Bates & Co., advertising agency for Colgate, which sponsored the show, Dotto.

Mr. Pinkham, will you be sworn?

Do you solemnly swear the testimony you will give to this committee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. PINKHAM. I do.

The CHAIRMAN. Will you have a seat, please?

Will you state your name for the record?

TESTIMONY OF RICHARD A. R. PINKHAM

Mr. PINKHAM. My name is Richard Pinkham, two middle initials, A. R.

The CHAIRMAN. What is your address, Mr. Pinkham?

Mr. PINKHAM. My business address is 666 Fifth Avenue, New York City.

The CHAIRMAN. What is your business?

Mr. PINKHAM. The advertising agency business.

The CHAIRMAN. Did you handle the advertising for the Colgate Co. in connection with the quiz show commonly referred to as "Dotto"?

Mr. PINKHAM. Yes, sir.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Pinkham, what were the contractual arrangements under which Ted Bates had "Dotto" placed on the air? Just summarize them.

Mr. PINKHAM. It was the normal contractual agreements that take place between an advertising agency working on behalf of a client and a producer of a show which the agency has recommended to the client and the client has agreed to sponsor.

Mr. LISHMAN. Who was the producer of "Dotto"?

Mr. PINKHAM. I believe the legal name of the producer was Marjeff, Inc.

Mr. LISHMAN. Did you enter into a written agreement with Marjeff, Inc.?

Mr. PINKHAM. As agent for the Colgate Co., we did.

Mr. LISHMAN. Do you know who the principals were in Marjeff, Inc.?

Mr. PINKHAM. I don't know precisely who they were. I assume they were members of the Frank Cooper office who were, I gather, the parent company to Marjeff, Inc.

Mr. LISHMAN. What would be the normal relations between the advertising agency and the producer, just referred to?

Mr. PINKHAM. In the usual long and quite detailed and complicated contract, much of which is what we call boilerplate, in other words, certain set paragraphs exist in all contracts, the advertising agency on behalf of the client contracts with the producer to produce a television show, either on a daily basis as was the case in "Dotto," on a weekly basis, or something similar.

Mr. LISHMAN. Did the agency, or is it customary for an advertising agency to exercise any degree of control over the producer?

Mr. PINKHAM. I wouldn't say that the word "control" would be the one I would choose. I would think supervision would be more to the point. Actually the agency's principal function is in the area of seeing to it that the commercials which they have produced for the client are properly placed and properly produced in the body of the show. Further, that the program quality, the caliber of the program be of sufficient nature to hold an audience.

Mr. LISHMAN. In other words, the entertainment value of the show was an important element which your agency would consider in supervising the activities of the producers.

Mr. PINKHAM. That was primarily the function of the producer. We had a supervisory role in the entertainment part of the program.

Mr. LISHMAN. What function did this supervision consist of? How was this supervision exercised?

Mr. PINKHAM. A show supervisor from my department attended every program which was put on the air, and it was his job, as I pointed out, to do two things. First, to see to it that the commercials were properly in place and properly produced, and secondly, to see to it that the caliber of the program remained high, and that nothing that could be detrimental to the program occurred.

Mr. LISHMAN. In connection with the "Dotto" show, who were the principals of Marjeff whom you principally dealt with? Were they Mr. Enright? I mean Mr. Fischer?

Mr. PINKHAM. The negotiation was conducted with Mr. Fischer, and his attorney, and most of my association with the program was with Mr. Fischer, and later with Mr. Jurist, who became the producer of the program.

Mr. LISHMAN. Did there come a time during the course of the program, "Dotto," that Ted Bates, as the advertising agent involved, was interested in continuing certain contestants on the show?

Mr. PINKHAM. No, sir; at no time.

Mr. LISHMAN. Did your agency at any time make any suggestions?

Mr. PINKHAM. No, sir.

Mr. LISHMAN. To either Mr. Jurist or anyone in his organization that it was hoped that certain contestants would remain on the show because of their drawing appeal?

Mr. PINKHAM. I think it is quite possible. As a matter of fact, I testified in one of the grand jury hearings, I believe, that I can recall one instance when there was an attractive girl on the nighttime version of "Dotto" which followed the daytime version of "Dotto," pointing out that I thought that she was an attractive girl, and therefore an attractive contestant, and that gee, I hoped she continued. No more than this. I suppose it would be possible for a producer or you to read something into that. To my mind it was a pretty naive comment that she was a pretty attractive girl.

Mr. LISHMAN. When did it come to your attention that Marie Winn, one of the contestants on "Dotto," had been previously given the answers to questions to be asked her on the show?

Mr. PINKHAM. My first acquaintance with this was a shocking meeting that occurred in my office at 9 o'clock on Friday morning, I think it was the 8th of August, when the vice president——

Mr. LISHMAN. What year was that?

Mr. PINKHAM. August 8, 1958. When the vice president in charge of advertising for the Colgate Co., my client, appeared at this unearthly hour in my office and said that he had received a call from Mr. Hilgemeier, in which he described this incident. This is the first I heard of it.

Mr. LISHMAN. What did you do after hearing about this?

Mr. PINKHAM. We took immediate action.

Mr. LISHMAN. What immediate action did you take?

Mr. PINKHAM. The first thing we did was to call over the producers of the show to interrogate them, to get their point of view.

Mr. LISHMAN. Whom did you call over?

Mr. PINKHAM. We called over, as I recall, Mr. Fischer, and Mr. Jurist.

Mr. LISHMAN. That is Sy Fischer?

Mr. PINKHAM. Sy Fischer.

Mr. LISHMAN. And Mr. Jurist?

Mr. PINKHAM. Yes.

Mr. LISHMAN. What happened at that meeting between you and Mr. Sy Fischer and Mr. Jurist, the producers?

Mr. PINKHAM. As I remember, we told them about this statement from Hilgemeier, and asked them whether this was true. To the best of my recollection they replied that there was no truth in his allegation, but nonetheless they had indeed paid him \$1,500. I remember reacting to this, this seemed an idiotic thing to do, and to a certain extent an admission of some guilt.

Mr. LISHMAN. Did you feel that the \$1,500 payment was the equivalent of what would be called hush money?

Mr. PINKHAM. It certainly sounded that way to me, sir.

Mr. LISHMAN. Did you ever make any investigation to ascertain whether or not these charges were true?

Mr. PINKHAM. We most certainly did.

Mr. LISHMAN. How did you conduct that investigation?

Mr. PINKHAM. We did not conduct it. Mr. Hilgemeier approached the Colgate Co. and we served as advisers throughout the investigation to Colgate in our capacity as advertising agents. Let me say that first we called in CBS to apprise them of the situation and they were no less exercised than we. We were all in a state of some shock at this thing. A meeting took place on Friday afternoon, and Friday night during which Miss Winn was interrogated by the lawyers for CBS and our lawyer. I was not at the meeting. I might add that our company counsel is here and he was at the meeting and perhaps could better tell what happened at it.

On Monday the Colgate Co. brought in an investigator to determine whether or not this was a crank complaint or whether there was something to it. The balance of that week was spent in a very earnest investigation by Colgate, CBS, and Ted Bates.

Mr. LISHMAN. Did they receive a report from Mr. Frothingham, who I believe was the attorney, or you or anyone else, that Miss Winn refused to deny the charges?

Mr. PINKHAM. To the best of my knowledge, sir, and I was not present at the meeting, Miss Winn claimed——

Mr. LISHMAN. I was asking if such a report was made to your agency, to your knowledge.

Mr. PINKHAM. That she refused to deny?

Mr. LISHMAN. Yes.

Mr. PINKHAM. A double negative. That she refused to deny.

Mr. LISHMAN. What report do you have concerning Marie Winn?

Mr. PINKHAM. Thank you, sir. Miss Winn said, as was reported to me at the meeting with her on Friday night, August 8, that she had not received the questions in advance. In fact, she had written them down after the program in order to tell her sister in Washington or Philadelphia about her experience on the program.

Mr. LISHMAN. Did you have a report that Sy Fischer told Miss Winn that she should lie about this?

Mr. PINKHAM. I have no such report, sir.

Mr. LISHMAN. We have testimony from Mr. Sy Fischer that he may have told her to lie about this.

Mr. PINKHAM. He certainly didn't tell me that, sir.

Mr. LISHMAN. Did your agency know at any time during the course of the "Dotto" program that questions and answers were being furnished to the contestants in advance of their appearance?

Mr. PINKHAM. Absolutely and categorically no.

Mr. LISHMAN. Were you ever aware during the course of these program showings that even though questions and answers were not given in advance to contestants, that they were assisted by being coached and instructed in various ways so that they would be able to give correct answers?

Mr. PINKHAM. If you eliminate the last phrase, Mr. Lishman, I would go along with that. Not so that they would give correct answers. I knew and everybody who is a professional in this business has known over the years since the radio days that contestants

are carefully chosen for their attractiveness because they contribute a great deal to the success of these programs and there has always been a general feeling that to an attractive contestant questions in their sphere of knowledge would be given so that they would have a better chance perhaps than their opponent.

Mr. LISHMAN. In other words, everyone in this business knew that some degree of control was being exercised in the quiz shows, including "Dotto"?

Mr. PINKHAM. We are having a semantic difficulty. I would not call that a control. I would call it something less than control. That was help to an attractive contestant. Yes, sir, that much existed. Help in that the questions were given in categories that the contestant was familiar with.

Mr. LISHMAN. Would you regard what was done on the "Dotto" show as immoral or fraudulent practice?

Mr. PINKHAM. I consider it completely reprehensible, sir, as it is now reported to me.

Mr. LISHMAN. Mr. Pinkham, going back to Miss Winn, were you here yesterday when the witness Hilgemeier testified?

Mr. PINKHAM. No, sir, I was trying to get here and I could not get a plane.

Mr. LISHMAN. He testified here yesterday that while Miss Winn was on the program, he went into her dressing room and tore the page from her notebook and then immediately departed from the studio. He showed it to another contestant, an Indian princess, Kimball, before leaving the studio. It is a fact that Miss Kimball eventually was paid \$4,000 to settle some kind of claim that she was presenting, and that Hilgemeier was paid \$1,500 hush money. Under those conditions, don't you think that any report you had received that Miss Winn had written these answers on a piece of paper after the program needs to be reexamined?

Mr. PINKHAM. You got me confused with your question. It is a long one. Do you mean reexamine now or should have been reexamined then? I am not quite sure what you mean, sir.

Mr. LISHMAN. If you were making a thorough investigation of this matter as to whether or not Miss Winn had received the questions in advance or not, it seems to me that you could have contacted Miss Kimball, and the rest of them, and found out just what went on in the studio at the time.

Mr. PINKHAM. We did indeed question Miss Winn. There was a battle of neurotics, who to believe. Whether you believed Hilgemeier or Miss Winn. They were on opposite sides of the fence.

Mr. LISHMAN. Hilgemeier had told that before leaving the studio he had shown the piece of paper to another contestant; did you get in touch with her?

Mr. PINKHAM. I can't answer that. I was not part of that investigation. I don't know.

Mr. LISHMAN. You accepted the report apparently that Miss Winn had written the answers down after the show, rather than before.

Mr. PINKHAM. We didn't know. That is the reason we started our investigation, to find out whether she was telling the truth. She claimed that she wrote them down before. I mean after.

Mr. LISHMAN. During the performance of "Dotto," did you have unit managers present?

Mr. PINKHAM. We don't call them unit managers.

Mr. LISHMAN. What do you call them?

Mr. PINKHAM. We call them program supervisors.

Mr. LISHMAN. Who were they?

Mr. PINKHAM. I believe at that time the program supervisor was named James Damon.

Mr. LISHMAN. Did you have another gentleman in that same capacity?

Mr. PINKHAM. Yes. We had a gentleman who was Mr. Damon's superior, whose name is Christian Walsh.

Mr. LISHMAN. Did those gentlemen attend the performances of the production, "Dotto," while it was going on?

Mr. PINKHAM. One or the other attended virtually every show.

Mr. LISHMAN. Did they not report back to the Ted Bates Agency actually what was going on at these performances?

Mr. PINKHAM. They reported back nothing that looked suspicious, because they saw nothing that looked suspicious. We were not looking for dishonesty. We had no reason to expect it.

Mr. LISHMAN. Was it not one of these gentlemen who suggested that a certain contestant be continued on the program?

Mr. PINKHAM. I wouldn't know that, sir.

Mr. LISHMAN. What report did either of these gentlemen make back concerning the Hilgemeier incident?

Mr. PINKHAM. Naturally we questioned them following the Hilgemeier incident, and I believe it took place in a meeting which I did not attend. So I cannot say what their reports were. I believe they testified before the grand jury, and it must be in the minutes of the grand jury. To the best of my recollection when we talked to them they indicated no knowledge of any such chicanery.

Mr. LISHMAN. Where is Mr. Walsh today?

Mr. PINKHAM. Yes, sir. He is in Hollywood, Calif.

Mr. LISHMAN. Is he still employed by Ted Bates?

Mr. PINKHAM. No, sir. He left a year ago of his own volition.

Mr. LISHMAN. I have no further questions.

Mr. ROGERS (presiding). Mr. Springer.

Mr. SPRINGER. Mr. Pinkham, how long have you been vice president of Ted Bates & Co.?

Mr. PINKHAM. Two and a half years, sir.

Mr. SPRINGER. Is Ted Bates & Co. an independent corporation?

Mr. PINKHAM. Yes, sir.

Mr. SPRINGER. Does it do advertising for anyone other than Colgate?

Mr. PINKHAM. Yes, sir.

Mr. SPRINGER. You are, then, a general advertising agency handling many accounts?

Mr. PINKHAM. That is correct.

Mr. SPRINGER. Have you ever handled any other quiz shows besides Dotto?

Mr. PINKHAM. The word "handle" is a difficult one for me, sir.

Mr. SPRINGER. Have you ever engaged any other quiz show for any client of Ted Bates & Co.?

Mr. PINKHAM. We have bought quiz shows for other clients; yes, sir.

Mr. SPRINGER. How many?

Mr. PINKHAM. I don't have that at my fingertips. I can name a few.

Mr. SPRINGER. Would you name a few?

Mr. PINKHAM. Yes, sir. "Name That Tune," for the Whitehall Co. We have purchased a segment of "Tic-Tac-Dough" for one of our clients. We have purchased several segments of the "Big Pay-off" for one of our clients. A fortunate title. We also have presently on the air a program called "Top Dollar" for one of our clients, which is a quiz show. I believe we have segments of "Concentration," a show presently on the air. In the past we have other failures which don't spring immediately to my mind.

Mr. SPRINGER. You have had at least six shows, Mr. Pinkham, and still continue some.

Mr. PINKHAM. Many more than six. They were not all quiz shows.

Mr. SPRINGER. Then you have had considerable experience in this field?

Mr. PINKHAM. Yes, sir.

Mr. SPRINGER. Was the handling of these productions directly under your supervision?

Mr. PINKHAM. The word "directly" bothers me.

Mr. SPRINGER. I will withdraw the word "directly." Under your supervision.

Mr. PINKHAM. Yes, sir.

Mr. SPRINGER. Was it your job, more or less, to know what the components of a quiz show were, and how the format was laid out?

Mr. PINKHAM. Within certain limitations; yes, sir.

Mr. SPRINGER. Did you watch these shows as each show was presented?

Mr. PINKHAM. It was virtually impossible. We had about 40 shows on the air.

Mr. SPRINGER. Did you follow "Dotto" both daytime and evening?

Mr. PINKHAM. Not every day, sir.

Mr. SPRINGER. What was the budget for "Dotto"?

Mr. PINKHAM. I would have to refer to contracts. It seems to me that the budget was around \$10,000 or \$11,000 a week for above the line, the talent part, not including the time paid to the networks. I have forgotten but it is roughly in that area.

Mr. SPRINGER. Would you say that is approximately what it was for "Dotto"?

Mr. PINKHAM. Around there. I don't think that includes the prize money.

Mr. SPRINGER. If I may refresh your recollection, the prize money was \$6,500 per week.

Mr. PINKHAM. That sounds about right, sir.

Mr. SPRINGER. Did you know that there were innumerable ties?

Mr. PINKHAM. Yes, sir.

Mr. SPRINGER. Did it ever occur to you that there was any irregularity in the fact that there were so many ties?

Mr. PINKHAM. No, sir.

Mr. SPRINGER. Did you ever make an estimate to determine what the chances were of a person tying more than once?

Mr. PINKHAM. No, sir.

Mr. SPRINGER. When you paid the \$6,500, you felt that you had discharged your obligation, is that true?

Mr. PINKHAM. No. We still had the obligation of supervising on behalf of our client program quality and the proper production.

Mr. SPRINGER. How often during the time that 'Dotto' was on the air did you consult with Chris Walsh and Damon?

Mr. PINKHAM. Almost daily.

Mr. SPRINGER. Did they make reports to you with reference to how the show was going?

Mr. PINKHAM. Yes.

Mr. SPRINGER. Did they have conversations with you with reference to contestants?

Mr. PINKHAM. Yes.

Mr. SPRINGER. In those conversations, did they indicate to you that they had told the producer, or indicated to the producer, that they wanted certain contestants on or off the show?

Mr. PINKHAM. Never, sir.

Mr. SPRINGER. Was it the policy of Damon and Walsh to indicate whether or not they felt a contestant was worthy of being on the program or would, as you say, have audience appeal?

Mr. PINKHAM. Absolutely not, sir, and I doubt very much that they did.

Mr. SPRINGER. Do you have any basic reason for believing that?

Mr. PINKHAM. Just that they were chosen because they were men of integrity, and this would not be an honest thing to do, to try to hold one.

Mr. SPRINGER. I suppose, Mr. Pinkham, without a doubt they watched these programs and were present each day when they were produced?

Mr. PINKHAM. Yes, sir, almost every program.

Mr. SPRINGER. Have you heard the testimony here concerning what went on in the "Dotto" studio during the daytime?

Mr. PINKHAM. This is my first visit to your room. I have not heard the testimony.

Mr. SPRINGER. You have heard no testimony?

Mr. PINKHAM. No, sir.

Mr. SPRINGER. Just to put this hypothetically to you, Mr. Pinkham, there was testimony that the contestants constantly were handling cards. That was ordinary, routine. In some instances they handled them in the dressing room. In other instances they handled them in various offices. They were handed cards with the questions and answers on them. Do you think it is possible that Mr. Walsh and Mr. Damon could have been about there all of those weeks without getting some knowledge of the fact that these contestants were looking at the cards and were receiving questions and answers?

Mr. PINKHAM. Mr. Springer, I did not know that the contestants ever got cards. I was under the impression that the cards were pretty heavily guarded.

Mr. SPRINGER. That was one of your mistaken assumptions, Mr. Pinkham.

Mr. PINKHAM. Yes, sir. To be sure, one of the things we discovered when we started our investigation was the low level of security given

to not only the cards, but also to the "Dotto" caricatures and to the clues. We found that there was a very poor security.

Mr. SPRINGER. You indicated here that you had control of the show within certain limitations.

Mr. PINKHAM. Control is a word that is difficult for me.

Mr. SPRINGER. I understand that you had supervision of this program within certain limitations.

Mr. PINKHAM. Yes, sir.

Mr. SPRINGER. What were the limitations?

Mr. PINKHAM. There were certain things that we felt were the producers' prerogative, and which we very jealously guarded. To the best of my knowledge, none of the people at Ted Bates or at the Colgate Co. were ever present at the briefing sessions for the contestants. Our part was to look at the contestants and be sure that they were not somebody that we didn't want to have on the air for one reason or another, that they were attractive people that might be attractive on the air, and thus make the program attractive to the public. We wanted the pace of the show to move quickly so that it would hold its audience. We wanted to have a show which was well produced and in which our commercials would look to their best advantage.

Mr. SPRINGER. Mr. Pinkham, do you know a man by the name of Laboda?

Mr. PINKHAM. Yes, sir. He is my client.

Mr. SPRINGER. What position does Mr. Laboda hold?

Mr. PINKHAM. He is director of television for the Colgate-Palmolive Co., sir.

Mr. SPRINGER. Did Mr. Laboda ever tell you that the "Dotto" show was going over the budget?

Mr. PINKHAM. It is possible.

We were always having budget problems. I don't remember a specific case.

Mr. SPRINGER. What did you do if the "Dotto" show went over the budget?

Mr. PINKHAM. We would caution the producer that he was spending too much money on sets or something like that so that he would come back within the realistic budget we had set for the program.

Mr. SPRINGER. Do you recall having a conversation with reference to the budget?

Mr. PINKHAM. Many conversations; yes, sir.

Mr. SPRINGER. With whom did you have those conversations?

Mr. PINKHAM. Most of them were with Mr. Fischer.

Mr. SPRINGER. On how many occasions would you say that you had such conversations?

Mr. PINKHAM. Not as many as some other members of my staff who were more directly concerned with the financial problems of the show, but I would think that I had perhaps, after the contract was signed and the budget had been worked out in the contract, two or three.

Mr. SPRINGER. Isn't it a fact that immediately after those occasions when you talked to Mr. Fischer about budget problems, the amount of the prizes went down?

Mr. PINKHAM. I certainly was not aware of that, sir.

Mr. LISHMAN. May I interrupt, Mr. Springer?

Mr. SPRINGER. If you want to ask a question.

Mr. LISHMAN. One question.

Isn't it a fact that the pace of the show, which you were interested in keeping up, also materially slowed down after such meeting.

Mr. PINKHAM. I was not aware of that, and I don't know what meeting you are talking about, sir in all honesty.

Mr. SPRINGER. We are talking about meetings in which you discussed budgetary problems with Mr. Fischer.

Mr. PINKHAM. I don't remember there being a major problem that set off such an exchange.

Mr. SPRINGER. Mr. Pinkham, let us reverse your position.

Suppose you were in Mr. Fischer's place and Mr. Fischer came to you and told you that you were constantly running over the budget, what would you do on such a program?

Mr. PINKHAM. I have never been a producer of a quiz show. I don't know.

Mr. SPRINGER. You do not know what you would do if your client told you you were running over the budget?

Is it not most likely that you would try to retrench some place?

Mr. PINKHAM. Yes.

Mr. SPRINGER. You said that even though the amount in prizes went down after these conversations, it never entered your mind that there could be anything wrong with the show such as contestants being given questions and answers.

Mr. PINKHAM. Mr. Springer, all I can say is I don't even remember the meeting that you are talking about where, if we did reduce the prize budget, I do not recall that.

It seems to me the prize budget was the same the moment the show went on the air and stayed at that level. I may be wrong. I don't remember such a meeting.

Certainly no pressure was brought to bear on the producer that made it an important consideration for him.

Mr. SPRINGER. Mr. Pinkham, as a reasonable man, would it occur to you that when you had a program upon which chances were being taken every day, that there could be a very substantial amount of money won over a period of time that would be far beyond any budget which you would present to a producer of the show?

Mr. PINKHAM. That is a very complicated thing, sir.

Actually, the budget is expected to cover such an emergency. I do not have the contract with me, but it seems to me there was a clause there that covered such off-ranges if it built up way beyond the budget.

Mr. SPRINGER. If the off-ranges were in favor of you, they were refunded, were they not?

Mr. PINKHAM. They certainly did not go into the producer's pocket. Yes, they were refunded to us.

Mr. SPRINGER. Mr. Pinkham, are you acquainted with other people in the so-called trade, who are involved in quiz programs?

Mr. PINKHAM. Yes, sir.

Mr. SPRINGER. Did you not talk from day to day with other agencies about quiz shows?

Mr. PINKHAM. No, sir.

Mr. SPRINGER. You never did?

Mr. PINKHAM. Certainly not from day to day.

Mr. SPRINGER. Did you talk from week to week?

Mr. PINKHAM. We don't give each other information or help. I rarely talk to other agencies in my business, Mr. Springer.

Mr. SPRINGER. Mr. Pinkham, I never believe it is well to cast aspersions. I am not trying to do it. The thing I am trying to get at is this, and I am sure the public has the same feeling about it from the numerous inquiries that are being made to this committee; that is, that you should have had quiz shows going on over a period of several years when this was being done by all the people in the trade—I am talking about producers of shows—and yet the people in the advertising agencies who were handling these accounts say that they had no knowledge of it. That just does not seem very reasonable to me.

Mr. PINKHAM. Certainly, Mr. Springer, on the basis of the evidence that you have been producing here, it doesn't. But that is hindsight. Perhaps we have been naive. But our feeling is that we are dealing with honest people. We are honest people. We expect them to be the same. We never looked for anything crooked in these things. It came as a distinct shock to all of us.

Mr. SPRINGER. Mr. Pinkham, just these last couple of questions and I am through.

You first received knowledge of this on or about August 8, 1958, when a representative of the Colgate Co. appeared in your office and said that Hilgemeier had called that company and had given him his story.

Mr. PINKHAM. Yes, sir.

Mr. SPRINGER. On what date did you cancel your contract for "Dotto"?

Mr. PINKHAM. Eight days later.

Mr. SPRINGER. I will say, Mr. Pinkham, that is commendable. I have no further questions.

Mr. ROGERS. Mr. Flynt.

Mr. FLYNT. No questions, Mr. Chairman.

Mr. DEROUNIAN. Mr. Pinkham, you testified that currently you are handling some quiz shows for clients, is that correct?

Mr. PINKHAM. Yes, sir.

Mr. DEROUNIAN. In view of your experience with "Dotto," have you changed your attitude about supervision on your current quiz shows?

Mr. PINKHAM. We most certainly have, sir.

Mr. DEROUNIAN. Can you just tell us a few specifics on how the changes have been made and what you are doing to insure that what happened on "Dotto" does not happen again on the others?

Mr. PINKHAM. We have impressed on one of the shows—most of these are network shows rather than independent packages as in the case of "Dotto"—therefore, through the network, the absolute importance of seeing to it that (a) maximum security is maintained on all questions and answers, and (b) that no such chicanery could occur.

We have, after all, a large business stake in these properties. Even if it were not our desire to have them scrupulously honest, it would be in the best business interest to keep them scrupulously honest.

We have insisted with the producers of the shows and the networks involved, and they have been most cooperative and of the same point of view, that special measures be taken to see to it that nothing ever happens like this again.

Mr. DEROUNIAN. Do you have people just representing you whose job it is to determine that the questions and answers are authentic, that the contestants are authentic and there is no other chicanery?

Mr. PINKHAM. No, sir.

Mr. DEROUNIAN. Do you have eyes and ears on every one of these shows?

Mr. PINKHAM. We have a supervisor on each one. There are certain areas which we don't know which are the prerogative of the network or the producer themselves. We cannot force our way into a private conversation between a producer and a contestant. We are not invited and we don't get into those things. We cannot be there to see that everything is done perfectly. It is impossible for an agency to perform such a function.

Mr. DEROUNIAN. Even under the existing circumstances, with your further enlightenment, it is still possible that some of these shows might be fixed?

Mr. PINKHAM. It is conceivable.

Mr. DEROUNIAN. Thank you.

Mr. SPRINGER. Mr. Pinkham, are you in "Tic-Tac-Dough" now?

Mr. PINKHAM. We have a client represented in "Tic-Tac-Dough."

Mr. SPRINGER. You do at the present time?

Mr. PINKHAM. Right now; yes, sir.

Mr. SPRINGER. Who is producing "Tic-Tac-Dough"?

Mr. PINKHAM. NBC.

Mr. SPRINGER. NBC by itself?

Mr. PINKHAM. Yes, sir.

Mr. SPRINGER. They have been producing that for over a year?

Mr. PINKHAM. I believe so, sir.

Mr. SPRINGER. Was Felsher the producer up until the last week?

Mr. PINKHAM. Yes, sir.

Mr. SPRINGER. Have you had any reason to believe that Mr. Felsher was not honest in this?

Mr. PINKHAM. I do not know Mr. Felsher, sir. I had to take the word of NBC which said that now we have taken over and believe you me, this is going to be done clean as a whistle.

Mr. SPRINGER. Do you believe from the testimony that has been given here that it is being run honestly?

Mr. PINKHAM. Mr. Springer, I have only seen what has been in the papers. I have been trying very hard to determine by conferences with NBC people whether Mr. Felsher's reluctance is based on something recent or whether it dates back before NBC took over.

In my opinion, it was questionable on their part to continue Mr. Felsher on the job as producer.

Mr. SPRINGER. Did you make any investigation with reference to Mr. Felsher?

Mr. PINKHAM. No, sir.

In this case, because it was a network package, we assumed the network would be just as militant cleaning it up had we been the direct contractor.

Mr. SPRINGER. We received testimony yesterday that Mr. Felsher who will be on the witness stand this morning, not only handed out the questions, but engaged in the very questionable practice of asking the witnesses not to go before the grand jury.

It does not seem to me that you have been very diligent in your investigation, if Mr. Felsher has remained on this program since September, 1958, when the grand jury began its investigation.

Mr. PINKHAM. Mr. Springer, our client is 1 of 20 or 25 on "Tic-Tac-Dough." We have a very, very small part in it. This is a network package. We have a great deal of confidence in the integrity of the National Broadcasting Co., and I assume that they would do as good a job as we would have done. In fact, perhaps better.

Mr. SPRINGER. Would you say, in view of the revelations concerning Mr. Felsher that we have had in the last few days, that NBC has done a good job?

Mr. PINKHAM. As I said a moment ago, I seriously questioned the wisdom of continuing him as producer when NBC took over. I gather he was in the Barry and Enright era and also in the NBC era. I think that is questionable.

Mr. SPRINGER. NBC did not take him off this program until the eve of this investigation, which was last Friday or Saturday.

Mr. PINKHAM. That is what I am referring to.

The CHAIRMAN. Mr. Moss.

Mr. Moss. Mr. Pinkham, over the years how many quiz shows have you handled as an agent for sponsors?

Mr. PINKHAM. I don't have that information at hand, sir. I would think as an agent for sponsors, it depends on definition.

Would you call "Queen for a Day" a quiz show? Probably not. I would say probably three, four, something like that.

Mr. Moss. Do you recall the names of any of those programs?

Mr. PINKHAM. I have given a few of the names—the "Big Pay-Off," "Top Dollar." We have representation, as I say, 1 out of 20 or 25 sponsors, on "Concentration" and "Tic-Tac-Dough." I can't think of any more. There may be others. We have 45 different programs in which we are interested.

Mr. Moss. I mean in prior years, prior to these revelations as to the character of some of these programs.

Mr. PINKHAM. The "Dotto" affair, sir, happened when I first came into the advertising agency business.

As I said before, I have only been in the advertising agency business 2½ years. I was previously with NBC and at that time I was identified with some of the quiz shows: yes, sir.

Mr. Moss. How were you identified with quiz shows when you were with NBC?

Mr. PINKHAM. My job at NBC for a while was as vice president in charge of programs, all programs. As such, everything on the air was under my jurisdiction.

Mr. Moss. Did you have a rather intimate knowledge of the production formats of the programs, the producing of programs?

Mr. PINKHAM. Not of the actual production. The general format, yes, because we would buy it from a runthrough, an audition, or a kinescope, and we would know pretty much what the program was about or we would not buy it.

Mr. Moss. Have you heard of the term "a controlled show?"

Mr. PINKHAM. I certainly have in recent months, yes.

Mr. Moss. Have you heard of it generally in the industry?

Mr. PINKHAM. No, sir.

Mr. Moss. Do you have any idea what it means?

Mr. PINKHAM. I do now, sir.

Mr. Moss. In recommending a show to a sponsor, you determine its availability, determine that it is something that will do the job your sponsor wants, and you go into the details as to cost?

Mr. PINKHAM. Yes, sir.

Mr. Moss. In these negotiations, are you concerned whether or not the budget for prizes is an adequate budget?

Mr. PINKHAM. Yes, sir.

Mr. Moss. How do you arrive at the determination that it is an adequate budget?

Mr. PINKHAM. We figure out how many games would be played in an average half-hour, an average of how much could be won on a normal basis, and in the case of a daily show, multiply it by five and that is the prize budget.

Mr. Moss. It has been indicated in testimony by witnesses before the committee that all of these shows were known as controlled shows, that it would be impossible to develop budget without a degree of control.

Were you aware of that?

Mr. PINKHAM. That is a shock to me, sir. I have no way of knowing or no indication that this was the case.

Mr. Moss. You were satisfied at all times that the budget just on this simple computation was adequate?

Mr. PINKHAM. Absolutely.

Mr. Moss. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Devine.

Mr. DEVINE. Mr. Pinkham, inviting your attention to the "Dotto" show, did you from time to time observe that show personally on a television set?

Mr. PINKHAM. Yes, sir.

Mr. DEVINE. Did any situation occur in which you doubted whether a contestant could identify a person from the dots with just a few lines depicting that person's pictures?

Mr. PINKHAM. There is one person which I missed, on which I saw an NBC kinescope, which certainly referred to me.

Mr. DEVINE. You are referring to the one in which Miss Winn appeared?

Mr. PINKHAM. And identified three ducks.

Mr. DEVINE. Is that the only occasion that you had some doubts that a contestant could identify the picture?

Mr. PINKHAM. I can only say that it never entered my head that such a thing would be done on a television program until the Hilgemeier incident. It came as an absolute shock to me and an absolute shock to my client.

Mr. DEVINE. If you had observed Miss Winn's appearance, do you think your suspicions would have been aroused at that point?

Mr. PINKHAM. I probably would have, or I thought she was a genius to put those ducks together in three dots.

Mr. DEVINE. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS. Mr. Pinkham, in your business, to determine whether a show is salable, do you go over a show pretty well? You have to know what product you are selling; do you not?

Mr. PINKHAM. Yes, sir.

Mr. ROGERS. Do you not go into the minute details of how one of these shows is operating?

Mr. PINKHAM. No, sir; not the minute details.

Mr. ROGERS. How deep do you go into it?

Mr. PINKHAM. As far as my own function is concerned, I have to look at an audition or a kinescope of a proposed show and determine whether I think the American public is going to respond to it and tune it in and thus get enough circulation to make it worth a sponsor's will to put up millions of dollars to sponsor it.

Then when the actual details of production start, I, thank goodness, can step aside and leave this to my subordinates, who are experts in this field, and take over at this point under my supervision.

Mr. ROGERS. When you viewed "Dotto" for that purpose, was it represented to you as an open and aboveboard honest battle of wits between two contestants?

Mr. PINKHAM. Absolutely.

Mr. ROGERS. Nothing was told you that there was any attempt to obtain knowledge of a proposed contestant or to furnish him with questions and answers?

Mr. PINKHAM. No, sir; at no point.

Mr. ROGERS. Who made those representations to you?

Mr. PINKHAM. Who sold the program to me?

Mr. ROGERS. Yes.

Mr. PINKHAM. Sy Fischer.

Mr. ROGERS. Sy Fischer?

Mr. PINKHAM. Yes.

Mr. ROGERS. Who was he representing?

Mr. PINKHAM. He was representing the Frank Cooper office.

Mr. ROGERS. The Frank Cooper office?

Mr. PINKHAM. Yes, sir. And later I guess the formulation of the Marjeff, Inc., which was the producer.

Mr. ROGERS. When you decided that it was all right, you turned it over to your subordinates?

Mr. PINKHAM. Yes, sir.

Mr. ROGERS. After you had sold it to Colgate?

Mr. PINKHAM. Yes, sir.

Mr. ROGERS. Who was your subordinate in charge to see that it went off on schedule?

Mr. PINKHAM. The two names I have mentioned before, sir, the specific supervisor whose lone function was supervision of the show, was James Damon.

Mr. ROGERS. James Damon?

Mr. PINKHAM. Yes, sir. His superior was the television supervisor on Colgate, Christy Walsh, who in turn worked for another gentleman who was director of operations, who in turn worked for me.

Mr. ROGERS. Were they all employed by the same firm?

Mr. PINKHAM. Yes, sir.

Mr. ROGERS. Now, were those men present at all times during the showing of these programs to keep an eye on what was going on to maintain their customer appeal?

Mr. PINKHAM. One or the other was supposed to be there at all times and, to the best of my knowledge, was.

Mr. ROGERS. At all times in the studio when these things were being filmed?

Mr. PINKHAM. When it is on the air.

Mr. ROGERS. I believe they were live programs, were they not?

Mr. PINKHAM. They did not attend so much the pre-production rehearsals and so forth, except to see to it that the commercials were in the proper place.

A great deal of the rehearsal for a television show, particularly a live show, particularly a quiz show, is done in the offices of the producer where he screens contestants and talks to contestants and does the things which now have turned out to be reprehensible.

Mr. ROGERS. Did they ever indicate to you, Mr. Pinkham, that there might be something phony about this whole procedure?

Mr. PINKHAM. I don't remember them ever bringing anything like that to my attention.

Mr. ROGERS. You found out about this first when you were called I believe on August 8, 1958, by Colgate or contacted by a Colgate representative and told that Hilgemeier said that this was not all as honest as it appeared?

Mr. PINKHAM. Yes sir.

Mr. ROGERS. What did you do immediately after that to discontinue the show?

Mr. PINKHAM. We first of all had to ascertain whether or not there was any validity in Mr. Hilgemeier's statement. We launched an investigation.

Actually, when I say "we," I am talking about our client Colgate, who took instantaneous action on it, in conjunction with CBS and Colgate agency Ted Bates. There were two meetings held on Friday, until late Friday night, the latter being a questioning of Miss Winn to get her story. Her story was the exact opposite of Mr. Hilgemeier's story, so we were in some doubt as to which one of these neurotics to believe. We recessed—

Mr. ROGERS. You were in doubt as to which one of these neurotics to believe?

Mr. PINKHAM. It was our feeling that either one of them could be lying.

Mr. ROGERS. Playing on words as you were a while ago, what do you mean by "neurotic"?

Mr. PINKHAM. They were neither of them people we had a tendency to believe.

Mr. ROGERS. I see.

You may proceed.

Mr. PINKHAM. I am sorry. I should not have used that word.

Mr. ROGERS. It is all right.

Mr. PINKHAM. We recessed for the weekend and on Monday the Colgate Co. inaugurated a full scale investigation. They hired an investigator, a private eye, if you will, to look into this.

Our attorney, Mr. Frothingham, and my subordinates, together with the Colgate attorney, questioned members of the staff, questioned as many of the contestants, I believe, as they could locate; CBS was involved in all of these.

As of the close of business on Monday, it was reported to me that Colgate had already reached the point of saying Hilgemeier is probably right; we are going to cancel. We have to be sure.

The rest of the week was spent in this investigation and by Friday night there was so much pressure on the producers as a result of this investigation that the producers took the initiative to ask for a hearing. A full dress hearing, including the top management of CBS, Colgate and Ted Bates then listened to Mr. Cooper explain his position.

His position was not particularly persuasive to us, and the decision was made on Saturday morning, despite the fact that this was the No. 1 show on the air daytime, to discontinue it forthwith.

Mr. ROGERS. Can you tell me who that private eye was?

Mr. PINKHAM. I believe it is Kesler, sir. I never met him.

Mr. ROGERS. He never made a report directly to you?

Mr. PINKHAM. He was hired by Colgate and reported to Colgate. I never met the gentleman.

Mr. ROGERS. Mr. Pinkham, the show was discontinued as a result of that investigation?

Mr. PINKHAM. Yes, sir.

Mr. ROGERS. You were also about that time, or some time after that, director for NBC of "Twenty-one," were you not? program director?

Mr. PINKHAM. I was at NBC before I was at Ted Bates. At that time I was the head of the program department and "Twenty-one" was one of the 100 programs we had on the air.

Mr. ROGERS. When you found out about "Dotto" being fraudulent?

Mr. PINKHAM. Yes.

Mr. ROGERS. What did you do about "Twenty-one?"

Mr. PINKHAM. I was no longer at NBC so there was nothing I could do.

Mr. ROGERS. I see. You were no longer at NBC at that time and did not work for them after that?

Mr. PINKHAM. No, sir.

Mr. ROGERS. Did you make any report or suggestion to NBC about it?

Mr. PINKHAM. I had no reason to, sir.

Mr. ROGERS. But you did not do it?

Mr. PINKHAM. Once again, I have apparently been naive enough to think that people are honest.

Mr. ROGERS. You mean even on "Twenty-one?"

Mr. PINKHAM. On any show.

Mr. ROGERS. Do you know, Mr. Pinkham, that they were using minors on the "Dotto" show?

Mr. PINKHAM. Occasionally they had children on the show, yes. I think it is good entertainment to have a bright attractive kid on the show.

Mr. ROGERS. I was wondering if you were familiar with any of the criminal statutes of New York with relation to contributing to the delinquency of a minor. Did that come into your mind?

Mr. PINKHAM. At that time, sir, I didn't think this was contributing to any delinquency. I thought it was a great opportunity to a kid.

Mr. ROGERS. In other words, you assumed it was on the up-and-up?

Mr. PINKHAM. Absolutely.

Mr. ROGERS. If you had known otherwise, would it have frightened you to use a minor on the show?

Mr. PINKHAM. I don't think that would have been the first thing that occurred to me.

Mr. ROGERS. Mr. Pinkham, your position is that there are so many people tied in with this situation that the ones at the top are completely protected insofar as knowledge of wrongdoing is concerned, is it not?

Mr. PINKHAM. I supposed that is the way to put it.

It is like an admiral being in command of a fleet of ships, each one of those ships is his responsibility. So therefore, it is my responsibility if I am the top guy.

Mr. ROGERS. I mean as far as actual knowledge is concerned.

Mr. PINKHAM. As far as actual knowledge, sir, our agency and our client had no way of having this kind of information. Certainly it would not have countenanced it had we known about it, nor did we.

Mr. ROGERS. That was the next question.

You do consider that this was not a proper way to conduct a program, do you not, insofar as representation to the American public is concerned?

Mr. PINKHAM. I think the evidence speaks for itself. We canceled the No. 1 show on the air.

Mr. ROGERS. Because you did feel it was a dishonest approach to the use of television waves?

Mr. PINKHAM. Yes, sir.

Mr. ROGERS. Thank you very much, Mr. Chairman.

Mr. FLYNT. Mr. Pinkham, on that cancellation that you just told Mr. Rogers about, did your company continue to pay, or did you have a cancellation clause in the contract?

In other words, was it cancellation that required continued payments or did the payments stop on the date of the cancellation?

Mr. PINKHAM. Had we invoked the morals clause on the contract, we could have canceled clean like that and no further payment would have been necessary. At that time we didn't have the information you gentlemen had and we could not have proved it in court. Therefore, the cancellation was accomplished between the Colgate Co. and Marjeff, Inc., on a basis where a settlement of some size was given to them to pay for their out-of-pocket expenses. The size of this I don't remember. It was all handled by Mr. Colgate and their attorneys.

Mr. Caria represented them at the negotiation. Then there was a clean cut at that point.

Mr. FLYNT. Did you have an additional clause in the contract on these quiz shows other than the normal ethical and moral clause?

Mr. PINKHAM. There were many, many clauses.

Mr. FLYNT. Did you have a particular provision in these quiz show contracts that provided that they should be bona fide contests?

Mr. PINKHAM. We had no anticipation that they would be anything else but, sir.

Mr. FLYNT. Have you ever discussed this with any of the people that worked for you at the time you were NBC vice president, that worked under you and more or less actually saw the actual production of these things.

Mr. PINKHAM. If I may get into chronology for a moment, the "Dotto" world happened after I left NBC. So I was still living in this dream world and thinking that these people were honest when I was at NBC and up until they knew more.

Mr. FLYNT. The reason I ask that is that there have been witnesses before the committee who have said that it was such common knowledge in the trade, I think was the expression used on more than one occasion, that it is difficult to understand why that common knowledge did not seep over into the industry part of it as well as the production part where it was done by independent producers by a process of osmosis, if nothing else.

Mr. PINKHAM. I think the problem is one of degree.

As I think I have testified before, there was an understanding among the professionals in this business that in a quiz program you could help an attractive contestant by finding out the general areas of knowledge and directing questions in those general areas to that attractive contestant.

Example: If you had a real pretty blond girl on the left and a heavy villain on the right, and you knew that the blond girl knew a great deal about the Ming dynasty porcelain and you knew that the villain knew nothing about it, you could ask her a question about Ming dynasty porcelain and him the same question. She would get it and he wouldn't.

Mr. FLYNT. Then is it just a question of the degree to which the controls were known in the industry?

Mr. PINKHAM. Yes, sir; I believe that is true.

Mr. FLYNT. In other words, it was known that there was a modicum of controls, but it was not known that it was as great as it was?

Mr. PINKHAM. I believe that is a fair statement, sir.

Mr. FLYNT. Then do you know of any efforts to determine to what extent this control went to within the industry, sir?

Mr. PINKHAM. I know of no such efforts other than the supervision by the networks for the network packages. It was very much to their best interests to keep things clean and honest, goodness knows.

As far as the agencies, the same thing.

Mr. FLYNT. I want to verify the chronology on this.

You had left NBC at the time these revelations were made public?

Mr. PINKHAM. Yes, sir.

Mr. FLYNT. Did you do any brain searching as to what went on in years past when you learned about these revelations?

Mr. PINKHAM. It never occurred to me, sir, that anything like this could have been anything more than an isolated incident on this one show, which made me unhappy. It never occurred to me that other shows might be really rigged.

Mr. FLYNT. As of now, from what you have learned either through public information, through these and similar hearings, or through independent investigations made by you, are you now of the opinion that practically all quiz shows were controlled or fixed to a greater or lesser degree?

Mr. PINKHAM. I would think that the quiz shows that have survived must be pretty clean by this time. If they are not, they need their heads examined.

I would not be surprised if that same degree of gentle influence still existed where you asked the Ming dynasty question from the girl who knows about Ming.

Mr. FLYNT. Thank you, Mr. Chairman.

Mr. Moss. Mr. Chairman, I wonder if I might ask a couple of additional questions.

The CHAIRMAN. Mr. Moss.

Mr. MOSS. Mr. Pinkham, when did you leave NBC?

Mr. PINKHAM. I believe it was the end of March 1957.

Mr. MOSS. I think that is all I have, Mr. Chairman.

Mr. PINKHAM. I might add, sir, in the game of "Musical Chairs," that NBC played during the last 6 months I was there, I was not the program director.

The CHAIRMAN. Mr. Lishman.

Mr. LISHMAN. Mr. Pinkham, do I understand your testimony that you were living in a dream world and believed that quiz shows were honest until the Hilgemeier incident?

Mr. PINKHAM. Yes, sir.

Mr. LISHMAN. Had not the charges about Stempel been aired prior to that time?

Mr. PINKHAM. I don't believe so. It seems to me that "Dotto" was the first one.

Mr. LISHMAN. The charges may not have been aired publicly, but do you know that there had been a meeting at NBC between Mr. Eiges and Mr. Moore of that organization, Mr. Enright, Mr. Davis, and Mr. Franklin, to discuss the fact that Stempel was threatening to expose the "Twenty-One" program?

Mr. PINKHAM. Mr. Lishman, this is not the sort of information that a network is eager to tell its advertising agency customers.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Mr. Pinkham, thank you very much for your appearance.

Mr. PINKHAM. Thank you.

The CHAIRMAN. Is Mr. Howard Felsher here?

Do you solemnly swear the testimony you will give this committee to be the truth, the whole truth, and nothing but the truth, so help you God?

TESTIMONY OF HOWARD DAVIS FELSHER

Mr. FELSHER. I do.

The CHAIRMAN. Do you have any objection to the photographers taking your picture?

Mr. FELSHER. I would prefer that they don't.

The CHAIRMAN. Very well.

Mr. FELSHER. Thank you.

The CHAIRMAN. Would you state your full name to the committee?

Mr. FELSHER. Howard Davis Felsher.

The CHAIRMAN. Where do you live, Mr. Felsher?

Mr. FELSHER. 221 West 82d Street, New York.

The CHAIRMAN. What is your business or profession?

Mr. FELSHER. Television production.

The CHAIRMAN. Pardon?

Mr. FELSHER. Television production.

The CHAIRMAN. How long have you been in this business?

Mr. FELSHER. Seven or eight years, I would say.

The CHAIRMAN. What is the name of your company?

Mr. FELSHER. I am currently unemployed. Until last Friday I was employed by Production Services Co., which I think was a subsidiary of NBC.

The CHAIRMAN. Services Production Co.?

Mr. FELSHER. Production Services Co.

The CHAIRMAN. Production Services Co.?

Mr. FELSHER. Yes.

The CHAIRMAN. Were you an associate producer of a show commonly referred to as "Tic-Tac-Dough"?

Mr. FELSHER. I was at the outset of the program. Several months after it started, I became its producer.

The CHAIRMAN. Mr. Lishman, you may proceed.

Let the record show that Mr. Felsher is accompanied by his attorney, Mr. Charles S. Murphy, to advise him of his constitutional rights as provided by the Rules of the House of Representatives.

Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Chairman, before proceeding with Mr. Felsher's testimony, I think it would be helpful to the subcommittee and all concerned that we have a kinescopic showing of a "Tic-Tac-Dough" show, the one of April 10, 1958, which is being presented solely as a means of informing the subcommittee as to how this show was conducted.

After this showing, it will be much easier for the members of the committee to follow the testimony concerning the manner in which this show was fixed.

The CHAIRMAN. Very well.

(Showing of kinescopic reproduction.)

Mr. LISHMAN. Mr. Felsher, for what organization do you work?

Mr. FELSHER. I worked originally for Barry & Enright and then for Production Services Co.

Mr. LISHMAN. While you were working with Barry & Enright, what position did you hold?

Mr. FELSHER. I started with them as a production assistant and ultimately was a producer.

Mr. LISHMAN. Did there come a time when you were the producer of the daytime show known as "Tic-Tac-Dough"?

Mr. FELSHER. Yes, sir.

Mr. LISHMAN. How long a time were you such a producer?

Mr. FELSHER. Approximately 3 years.

Mr. LISHMAN. Will you please state the approximate dates?

Mr. FELSHER. I became producer of "Tic-Tac-Dough" sometime in November, I think, of 1956, until last week.

Mr. LISHMAN. I am speaking while you were with Barry & Enright. You were the producer, as I understand it, of the daytime version of "Tic-Tac-Dough." What date was that?

Mr. FELSHER. I became producer—I don't know the exact date—

Mr. LISHMAN. Approximately?

Mr. FELSHER. November 1956.

Mr. LISHMAN. For how long did you act as producer of the daytime "Tic-Tac-Dough" show while you were with Barry & Enright?

Mr. FELSHER. Until August or September 1957. Then I left the day time show to produce the nighttime version of the show which you just saw. The following, sometime early in 1958, I became producer of the daytime show again.

Mr. LISHMAN. While you were producer—

Mr. FELSHER. Excuse me.

But Barry & Enright at that point were acting as producers for NBC. I think NBC bought the program sometime in the spring of 1957.

Mr. LISHMAN. May 2?

Mr. FELSHER. I don't know the date.

Mr. LISHMAN. When did NBC take over actual operation of the program?

Mr. FELSHER. You mean with the sale?

I think they actually took over the program, they owned the program in May 1957.

Mr. LISHMAN. When did they take over operating control? NBC.

Mr. FELSHER. You mean when Barry & Enright left the active supervision of the show?

Mr. LISHMAN. Yes.

Mr. FELSHER. It was September or October of last year.

Mr. LISHMAN. Did you continue on as producer of the show after that time?

Mr. FELSHER. Yes, I did.

Mr. LISHMAN. Mr. Felsher, is it a fact—before I ask that question—while you were producer of "Tic-Tac-Dough" during the period it was operated by the Barry & Enright organization, did you take your orders directly from Mr. Enright as to how this show should be run?

Mr. FELSHER. I was given many areas of independence, but it was his program.

Mr. LISHMAN. Did you confer with Mr. Enright concerning what contestants should be furnished with questions and answers in advance of the show?

Mr. FELSHER. Yes, I did.

Mr. LISHMAN. Did he make the decision that such assistance should be rendered to these contestants?

Mr. FELSHER. I would not have done it without his consent. In many instances he had not even met the person involved.

Mr. LISHMAN. But as a general rule, before you arranged to furnish questions and answers in advance to a particular contestant, did you clear that with Mr. Enright?

Mr. FELSHER. Yes.

Mr. LISHMAN. Now, Mr. Felsher, is it a fact that up to the fall of 1958, 75 percent of these evening performances, or more than 75 percent of these performances, were ones in which at least one of the contestants had been furnished the questions and answers in advance of the show itself.

Mr. FELSHER. You say more than 75 percent?

Mr. LISHMAN. Yes, sir.

Mr. FELSHER. May I think about that for a moment?

Mr. LISHMAN. Yes.

Mr. FELSHER. I would say it was in that vicinity.

Mr. LISHMAN. Were you the person that furnished the questions and answers in advance to such contestants?

Mr. FELSHER. Yes, I was.

Mr. LISHMAN. And Mr. Enright knew that you were doing this?

Mr. FELSHER. Yes, he did.

Mr. LISHMAN. Did you tell contestants which categories to select on the show?

Mr. FELSHER. In some instances.

Mr. LISHMAN. Then with respect to the category, did you furnish them the questions that would be asked?

Mr. FELSHER. Yes.

Mr. LISHMAN. Where did you meet with the contestants to give them this advance information?

Mr. FELSHER. For the most part, it was in my office.

Mr. LISHMAN. Did you also meet with contestants outside of your office to furnish them such advance information?

Mr. FELSHER. On occasions.

Mr. LISHMAN. Did you meet with them at your home?

Mr. FELSHER. Not very frequently, but I did.

Mr. LISHMAN. Did you also meet with them in your automobile?

Mr. FELSHER. Yes.

Mr. LISHMAN. And you furnished them with these advance questions and answers?

Mr. FELSHER. Yes.

Mr. LISHMAN. Did you ever tell a contestant that he had been brought in deliberately in order to cut down the high winnings of the then champion?

Mr. FELSHER. In general terms, I would say that is true. I don't know specifically what words I used.

Mr. LISHMAN. Was this for budgetary reasons?

Mr. FELSHER. In those instances, it was.

Mr. LISHMAN. Did you coach any of the contestants appearing on "Tic-Tac-Dough" concerning how they should act while on the show?

Mr. FELSHER. The only instructions that I can remember having given them were given to all contestants on the shows. It was mostly for their own benefit.

The big instruction was to please hesitate before beginning an answer. We had to accept the first answer given and if they blurted out a wrong answer, we would have to accept it.

Mr. LISHMAN. Mr. Felsher, on October 27, 1958, did you testify before the grand jury of New York County and deny that you had given questions and answers in advance to the contestants on "Tic-Tac-Dough"?

Mr. FELSHER. Yes, I did.

Mr. LISHMAN. Subsequently, on April 2, 1959, did you again appear before the New York County grand jury voluntarily on the advice of your counsel, Mr. Sol Gelb, and recant your previous testimony?

Mr. FELSHER. Yes, I did.

Mr. LISHMAN. At that time, did you not then in detail respond to questions and your answers were that in theory every contest some assistance had been furnished in advance to the contestants on the "Tic-Tac-Dough" show?

Mr. FELSHER. If I may qualify that.

Mr. LISHMAN. Yes, sir.

Mr. FELSHER. The daytime program and the nighttime program—on the daytime program assistance was given in really very, very few cases. We had approximately 2,500 or more contestants on the daytime program in the course of the 3 years I was affiliated with it. I would say, well, no more than 20 to 30 people were ever given assistance out of those 2,500 or more on the daytime program.

Mr. LISHMAN. Isn't it a fact that of those 20 or 30 people who received such assistance that they appeared more than once on the show?

Mr. FELSHER. Yes, they did appear more than once.

Mr. LISHMAN. Wasn't the nighttime show the big money show?

Mr. FELSHER. Yes, I should think so. But the greatest amount of money ever won on "Tic-Tac-Dough" was won on the daytime program.

Mr. LISHMAN. With questions and answers furnished on that daytime show in advance, where the big money was won?

Mr. FELSHER. In the instance I just cited?

Mr. LISHMAN. Yes.

Mr. FELSHER. Not at all.

Mr. LISHMAN. Wasn't that an exceptional case?

Mr. FELSHER. As a matter of fact—exceptional how, sir?

Mr. LISHMAN. In that there was a big money winner who had not received the questions and answers in advance?

Mr. FELSHER. On the daytime program there were quite a few big money winners who did not receive any assistance.

Mr. LISHMAN. What was the amount of the big money winnings on the daytime show?

Mr. FELSHER. His total winnings were approximately \$170,000.

The CHAIRMAN. Was that the total winnings that you paid on the daytime show to all contestants?

Mr. FELSHER. No; that was to one person.

The CHAIRMAN. To one person?

Mr. FELSHER. Yes.

Mr. LISHMAN. But it is a fact, is it not, as you previously testified, that in more than 75 percent of the performances on the nighttime show, questions and answers were supplied in answer to at least one of the contestants.

Mr. FELSHER. Yes, that is true.

Mr. LISHMAN. Why do you distinguish between the two shows?

Mr. FELSHER. Only because they are two individual shows. That is the only reason.

Mr. LISHMAN. Why was it necessary to give questions and answers on the nighttime show, in more than 75 percent of the performances, and that was not necessary apparently in the daytime show?

Mr. FELSHER. Well, as it develops, the nighttime show had been on the air only 4 or 5 months up to the time of the kinescope recording you just saw. The daytime show had been on the air a lot longer and was established. It wasn't necessary for the daytime show any more. It attracted an audience.

Mr. LISHMAN. Is it not true that in furnishing questions and answers in advance, you were carrying out a practice that was common to all the Barry & Enright quiz shows?

Mr. FELSHER. I really can't speak with authority on that, Mr. Lishman. I can only speak for "Tic-Tac-Dough."

Mr. LISHMAN. You appeared before the New York grand jury for the first time on October 27, 1958; is that correct?

Mr. FELSHER. I beg your pardon?

Mr. LISHMAN. You first appeared before the grand jury of New York on October 27, 1958?

Mr. FELSHER. No; I think that was my second appearance.

Mr. LISHMAN. I think the second appearance was in April of 1959.

Mr. FELSHER. I am sorry; you are right.

Mr. LISHMAN. So on October 27, 1958, you first appeared before the New York County grand jury and denied participation in any fixing of the "Tic-Tac-Dough" show. At that time, or about that time, did any representatives of NBC have knowledge that you had appeared before the grand jury?

Mr. FELSHER. Yes. At least one person did.

Mr. LISHMAN. Who?

Mr. FELSHER. Mr. Robert Aaron, who was my supervisor, my boss at the time.

Mr. LISHMAN. Was he an employee of NBC?

Mr. FELSHER. Yes.

Mr. LISHMAN. How did he come to know that you testified on October 27, 1958, before the New York County grand jury?

Mr. FELSHER. I was scheduled to do a show that afternoon and since I had to appear before the grand jury, I could not be there. I went to his office and told him that I could not be there. He asked why not. I said, "I have to testify before the grand jury."

Mr. LISHMAN. Did you subsequently tell this gentleman the gist of your testimony before the grand jury?

Mr. FELSHER. I really don't know. I don't think it was ever brought up again, but I am not sure.

Mr. LISHMAN. After a representative of NBC had this knowledge that you appeared before the grand jury on October 27, 1958, when was the first time thereafter that anyone in NBC asked you as to your appearances before the grand jury?

Mr. FELSHER. I don't think it was ever mentioned again to the best of my recollection. It was never mentioned again—I am really hazy about this—it might have been in passing but I actually don't remember it, until Mr. Ervin called me into his office last week. I don't remember whether he mentioned it then. We talked about a subpoena from this committee.

Mr. LISHMAN. Did anyone up to that time in the NBC organization ever ask you if you had ever given questions and answers in advance on the show, "Tic-Tac-Dough"?

Mr. FELSHER. To the best of my knowledge and to the best of my recollection they didn't.

Mr. LISHMAN. Even during this whole year after you had been subpoenaed before the grand jury, and you had notified an NBC representative of that fact, you were not asked by anyone in NBC as to why you were subpoenaed before the grand jury, or whether or not you had given questions and answers in advance to the contestants?

Mr. FELSHER. I think on the day that I mentioned to Mr. Aaron that I was going to testify before the grand jury, he said, "How come?" I said, "Because 'Tic-Tac-Dough,' along with many other shows, is being investigated." I might not have said that. I think I did.

Mr. LISHMAN. But you were never asked?

Mr. FELSHER. About questions and answers?

Mr. LISHMAN. Yes.

Mr. FELSHER. No, I don't think I was.

The CHAIRMAN. Did Mr. Ervin ask you about it when he called you in on the day you spoke of a moment ago?

Mr. FELSHER. He asked me if I would sign an affidavit stating that I had never given questions and answers. When I said that I couldn't—well, I said originally when he called me in that I would like to consult with my attorney. Two or three days later I went back to Mr. Ervin on the advice of my attorney and said I could not sign the affidavit, and he said, "We can only assume that you did give questions and answers."

The CHAIRMAN. Let us see about this. At that time I understood the show was owned by NBC.

Mr. FELSHER. Yes, it was.

The CHAIRMAN. You were working for NBC.

Mr. FELSHER. Yes.

The CHAIRMAN. You were talking to the general attorney for NBC.

Mr. FELSHER. Yes.

The CHAIRMAN. Then you could not talk to the general attorney for the company you were working for. You had to talk to your own lawyer.

Mr. FELSHER. I was under subpoena from the committee.

The CHAIRMAN. Pardon?

Mr. FELSHER. I was under subpoena from the committee. I felt I should consult my attorney—an attorney; it was not Mr. Murphy.

The CHAIRMAN. It is strange to me that you could not discuss the problem with the general attorney of the company that you were employed by.

Mr. FELSHER. He agreed that I should consult my attorney first before I gave him a decision.

Mr. LISHMAN. To your knowledge, Mr. Felsher, during this entire year while "Tic-Tac-Dough" was under investigation by the grand jury, was anyone ever asked whether or not contestants on that show—was anyone ever asked by any representative of NBC—whether any contestants on that show had been furnished with questions and answers in advance of the performance?

Mr. FELSHER. I can't answer for other people. I can only say that I don't think I was asked.

Mr. LISHMAN. You were the producer.

Mr. FELSHER. Yes, I was.

Mr. LISHMAN. Is that show still on the air?

Mr. FELSHER. It was as of Tuesday. I don't know if it is today. I would like to add that for much over a year, even before the investigations in New York started, there was no help at all given on the daytime version of "Tic-Tac-Dough."

Mr. LISHMAN. Why was that?

Mr. FELSHER. As I explained earlier, it was quite well established at that point, and I just didn't feel it was necessary.

Mr. LISHMAN. In other words, did you have a meeting with Mr. Enright at or about the time that the TV quiz show scandal broke in the newspapers?

Mr. FELSHER. There were many meetings at that time.

Mr. LISHMAN. A particular meeting at which you both agreed or decided that from then on in you would not furnish questions and answers in advance.

Mr. FELSHER. That had been decided in terms of the daytime show much, much earlier than that.

Mr. LISHMAN. I am talking now about the nighttime show.

Mr. FELSHER. Yes.

Mr. LISHMAN. But you had furnished assistance to 20 or more of your contestants on the daytime show, is that correct?

Mr. FELSHER. Twenty or more out of more than 2,500.

Mr. LISHMAN. How did you select the persons to whom you would give this advance information?

Mr. FELSHER. On the basis of their appeal to a television audience.

Mr. LISHMAN. What was the reason that, when you first appeared before the grand jury, you denied that you had rendered any assistance to contestants on "Tic-Tac-Dough"?

Mr. FELSHER. I would say that the primary reason was to protect their identities. I thought I could protect their identities in that way.

The CHAIRMAN. I didn't understand your reply.

Mr. FELSHER. I would say that the primary reason was to protect the identities of these people. They were fine people, really, and they would have been destroyed in their hometowns, their own locales, if their identities would become generally known. That was one of the major reasons.

The CHAIRMAN. Was there not consideration of protecting yourself and your own company?

Mr. FELSHER. I would say that played a part, too. I think honestly——

The CHAIRMAN. Self-preservation is the first law of nature, you know.

Mr. FELSHER. Yes, I have heard that, sir. I would say that did play a part. I can't assign percentages.

The CHAIRMAN. I think I might as well ask this question right here. I have been wanting to for some time. You are about the proper man, I think, to ask this question. You were connected with this business for a long period of time. This so-called rigging went on for a long period of time. How did you or how did anyone in your position, of this or any other show, feel that you could continuously get by with this kind of operation when you were dealing with so many people without it finally coming out and being made public?

Mr. FELSHER. I really can't answer that. I can't answer that. I don't know. I suppose I felt that at one time or another it might come out.

The CHAIRMAN. You were willing to take the chance anyway.

Mr. FELSHER. It was not a matter of willing to take the chance. For myself, I was trying to put together an entertaining and exciting show. That is why I did this for the most part. At the time I did not feel that it was terribly, terribly wrong.

The CHAIRMAN. You never did come to the conclusion then that you could fool all the people all the time?

Mr. FELSHER. No.

Mr. LISHMAN. Mr. Felsher, at the time the New York grand jury was investigating the quiz shows, did you meet with some of the contestants on "Tic-Tac-Dough" to whom you had given the answers to questions in advance of the show?

Mr. FELSHER. Yes, I did.

Mr. LISHMAN. About how many of such contestants did you meet with, without naming them?

Mr. FELSHER. I don't think I met with more than four or five. I telephoned to others.

Mr. LISHMAN. How many others did you telephone to?

Mr. FELSHER. Twenty-two or twenty-three, between 20 and 30. There were not more than 30 people involved in both shows.

Mr. LISHMAN. What did you tell these people either personally or on the phone when you thus got in touch with them?

Mr. FELSHER. That if I were asked—as I best remember—I told them that if I were to testify in front of the grand jury, I would deny that I had given them questions and answers.

Mr. LISHMAN. Did you suggest to any of these persons that they should likewise deny that they had received such questions and answers in advance when they appeared before the grand jury?

Mr. FELSHER. Yes, I did.

Mr. LISHMAN. Did you do that with, among other persons, two young girls who had been on the show?

Mr. FELSHER. Yes, I did.

Mr. LISHMAN. Did Mr. Enright advise you to do this?

Mr. FELSHER. No, he didn't advise me to do this. I just did not want their identities revealed. I was panicked. I was terrorized, and I did it.

Mr. LISHMAN. How did you think by advising these persons to commit perjury that they would keep their identities secret?

Mr. FELSHER. If no one knew that they had received questions and answers, then they would not be suspected of having received them.

Mr. LISHMAN. Weren't you also interested in protecting yourself?

Mr. FELSHER. I think I was interested in protecting myself and the program. I did not feel if I lost the job I could not find another one.

Mr. LISHMAN. Some of the persons you contacted insisted on telling the truth, did they not?

Mr. FELSHER. I actually don't remember that. I don't know.

Mr. LISHMAN. Getting back to the show itself, did Mr. Enright tell you from time to time that he did not want you as producer of "Tic-Tac-Dough" to go over the weekly amount allocated in the budget for that show in prize money?

Mr. FELSHER. That he did not want me to go over it?

Mr. LISHMAN. Yes.

Mr. FELSHER. Could I ask you to repeat the question? I am not sure I understand.

Mr. LISHMAN. I will repeat it. While you were producer of "Tic-Tac-Dough" show, did Mr. Enright from time to time tell you that he did not want you to go over the figure of \$6,500 per week in the prize money?

Mr. FELSHER. He did not want that amount exceeded in prizes given away; is that what you mean?

Mr. LISHMAN. He did not want to exceed \$6,500; yes, sir.

Mr. FELSHER. I think the feeling was that an individual week did not matter as long as over——

Mr. LISHMAN. Mr. Felsher, I will show you a paper and see if it refreshes your recollection.

(Document handed to witness.)

Mr. FELSHER. What that means, sir, is that \$6,500 a week was the budget allocated to prize money. As an average we would not want to go over that.

Mr. LISHMAN. Did you control your contestants with this in mind?

Mr. FELSHER. That was part of the reason. The primary reason really was excitement and entertainment.

Mr. LISHMAN. Will you just wait a moment? I will hand you another piece of paper to refresh your recollection on that point, too. We will come to that page as soon as we find it. Did you meet with Mr. Enright and discuss with him whether contestants should be contacted by you in order to induce them not to tell the truth to the grand jury?

Mr. FELSHER. This was over a year ago. As accurately as I can remember it, I think I told him that was what my position was going to be when I contacted these contestants.

Mr. LISHMAN. What was Mr. Enright's reaction to this?

Mr. FELSHER. Well, I was quite adamant about it. I think he understood my being that adamant.

Mr. LISHMAN. Did Mr. Enright ever tell you, "You go down to that grand jury and tell them the truth"?

Mr. FELSHER. Yes, he did, prior to my second appearance before the grand jury.

Mr. LISHMAN. Not on your first appearance in 1957?

Mr. FELSHER. Well, I wouldn't be budged at that point.

Mr. LISHMAN. Did your second appearance before the New York County grand jury follow Mr. Freedman's indictment for perjury?

Mr. FELSHER. By several months, yes.

Mr. LISHMAN. Who was Mr. Freedman?

Mr. FELSHER. He was the producer of "Twenty-one."

Mr. LISHMAN. Mr. Felsher, did anyone else in the Barry & Enright organization give questions and answers in advance to contestants on "Tic-Tac-Dough"?

Mr. FELSHER. If they did, I would have been quite shocked. Let me say surprised if the adjective has amused the audience.

The CHAIRMAN. You say they did or did not?

Mr. FELSHER. If they had, I would have been surprised.

The CHAIRMAN. In other words, you did all of it yourself?

Mr. FELSHER. Yes, I did.

Mr. LISHMAN. Did any other employees ever give questions and answers on that program besides you?

Mr. FELSHER. I suppose it is possible, Mr. Lishman.

Mr. LISHMAN. When you would consult with Mr. Enright concerning the contestants to whom you would give this advance information, what kind of discussion would take place between you?

Mr. FELSHER. Can I ask you to repeat that, please?

Mr. LISHMAN. When you discussed with Mr. Enright whether or not you should give advance questions and answers to a particular contestant, and it had not been done before, what would Mr. Enright say to you?

Mr. FELSHER. He would ask me why this particular contestant, this particular person.

Mr. LISHMAN. Would Mr. Enright say to you, "Is this person some one who will keep this thing quiet and not go around talking about it afterwards," or words to that effect?

Mr. FELSHER. Words to that effect, yes.

The CHAIRMAN. I think that requires a little more explanation. I think you should just tell for the record in fairness to everyone what was the conversation instead of the general reply, words to that effect.

Mr. FELSHER. It was essentially what Mr. Lishman just said. He would say, "Is this person capable of keeping a secret," or something synonymous with that.

The CHAIRMAN. Would you reply that you had investigated and in your opinion that person was so capable or not?

Mr. FELSHER. Yes, I would reply that I thought the person was. I would not have recommended the person to begin with if I didn't think that person was able to keep a secret. My reply would be, "Yes, I thought so."

The CHAIRMAN. The facts are that you and Mr. Enright had a perfect understanding about the procedure, and how the program was to be carried on.

Mr. FELSHER. It was at times imperfect, but for the most part, yes.

The CHAIRMAN. Would you say understanding?

Mr. FELSHER. Yes.

Mr. LISHMAN. Mr. Chairman, I think it is appropriate that we should read some of Mr. Felsher's testimony before the grand jury on this particular point to show just what happened at such a meeting with Mr. Enright. I will leave out names of the contestants. After Mr. Felsher had proposed that questions and answers would be supplied in advance to a contestant.

What did Dan Enright say?

Again it was relatively the same thing. He asked me why I thought that X would be a good contestant and then I told him. He said O.K. Then the other questions, too. Will he talk about this or will he keep it quiet?

The CHAIRMAN. What was the reply?

Mr. FELSHER. My reply?

The CHAIRMAN. Yes.

Mr. FELSHER. My reply was yes, I thought he would or she would.

Mr. LISHMAN. Was help ever given to a contestant in order to liven up the show and get a better rating?

Mr. FELSHER. That was always the primary reason.

Mr. LISHMAN. By liven up the show, what would you mean? What would be meant?

Mr. FELSHER. Excitement, tension, pace, drama.

The CHAIRMAN. Suspense.

Mr. FELSHER. Suspense.

Mr. LISHMAN. Was help also given to a contestant in order to produce ties?

Mr. FELSHER. In some instances, but ties happened extremely frequently without help.

Mr. LISHMAN. Do you recall having a conference about the budget in which you received instructions from Mr. Enright that the game should be slowed down in order to help the budget situation? Do you recall any such instructions from Mr. Enright?

Mr. FELSHER. I recall generally or vaguely such conversation. I don't think I was producing the program at the time.

Mr. LISHMAN. I will show you this, Mr. Felsher, in order to refresh your memory.

(Document handed to witness.)

Mr. FELSHER. Yes, this confirms what I had thought. I was not the producer of the show at the time. The daytime show at the time, Stan Green was.

Mr. LISHMAN. But you were present when Mr. Enright indicated what steps should be done on the program?

Mr. FELSHER. Yes, I said I vaguely remember that conversation.

Mr. LISHMAN. Mr. Green was aware then of these instructions?

Mr. FELSHER. To slow down the game.

Mr. LISHMAN. Yes.

Mr. FELSHER. Yes, he was.

Mr. LISHMAN. Another way of maintaining budget control was to furnish assistance to a contestant in such a way that he could cut down the high winnings of the champion.

Mr. FELSHER. Yes.

Mr. LISHMAN. Was the master of ceremonies in the show ever aware to your knowledge of the controls that were being exercised?

Mr. FELSHER. Not to my knowledge.

Mr. LISHMAN. At one time, Mr. Felsher, you were connected in some way with the quiz show, "Twenty-one."

Mr. FELSHER. For a brief time I was connected with it.

Mr. LISHMAN. Did you ever have any knowledge that show was likewise controlled?

Mr. FELSHER. No, I did not have any knowledge of that.

Mr. LISHMAN. Did Mr. Enright ever discuss that show with you?

Mr. FELSHER. Not in those terms.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. There undoubtedly will be some questions by members of the committee. It is now almost 12:30. I would like to ask the members of the committee to meet me at 1:30 in the regular committee room for a few minutes executive session. Then we will return here at 2:15 to continue. Can you be back at that time?

Mr. FELSHER. Yes, sir.

(Thereupon, at 12:25 p.m., a recess was taken until 2:15 p.m., the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will be in order.

Mr. Mack, do you have any questions of the witness?

Mr. MACK. Mr. Chairman, I just have one question, I think. I believe I have two questions.

You indicated, Mr. Felsher, that you consulted with Mr. Enright about coaching the contestants and you indicated that he had more or less given his approval after you had given him certain assurances concerning the contestant, is that not true?

TESTIMONY OF HOWARD DAVIS FELSHER—Resumed

Mr. FELSHER. Yes.

Mr. MACK. That is the way I understood your testimony.

After NBC purchased this program, did you continue to consult with Mr. Enright?

Mr. FELSHER. You say after the purchase of the program?

Mr. MACK. Yes.

Mr. FELSHER. Yes, I did.

Mr. MACK. You consulted with no member of the NBC staff other than Mr. Enright?

Mr. FELSHER. No.

Mr. MACK. In other words, Mr. Enright is the only person that you consulted with concerning the program?

(Mr. Felsher consulted with counsel.)

Mr. FELSHER. Yes, Mr. Enright was the only person I consulted about giving questions and answers. Of course——

Mr. MACK. Go ahead.

Mr. FELSHER. After September 1958, this was not the practice when NBC took over.

Mr. MACK. I thought NBC took over in May.

Mr. FELSHER. They bought control. They owned the shows, but they didn't do the production.

Mr. MACK. So you continued to consult with Mr. Enright?

Mr. FELSHER. Yes.

Mr. MACK. The other question I would like to ask you, and I believe I understood you correctly, you said that these were fine people.

Mr. FELSHER. Yes.

Mr. MACK. Speaking of the contestants.

Do you put all of them in the same category, the honest and the dishonest, as being fine people?

Mr. FELSHER. Could I ask you—I didn't see any dishonesty on the part of these contestants.

Mr. MACK. You thought it was very honorable then to have them agree with you in advance that they would keep this a secret and mislead anyone who might ask them concerning being fixed on the program?

Mr. FELSHER. I cannot call it honorable; no.

Mr. MACK. I beg your pardon?

Mr. FELSHER. I cannot call it honorable.

Mr. MACK. I would not either. I would put it in somewhat of a dishonest category.

Therefore, I wondered if those people were included in the statement that you made when you referred to them as fine people.

Mr. FELSHER. I think if there is any onus—I think that the onus involved in this situation should be ascribed to me and not to the contestants.

Mr. MACK. But you included all of the contestants when you spoke of them as being fine people?

Mr. FELSHER. In large measure. I cannot say all. I really don't know them all that well.

Mr. ROGERS. Mr. Felsher, you talk of the control of this program. You did have an additional control of this program in that you could jumble up these categories as they came up on the board, did you not?

Mr. FELSHER. To the best of my knowledge, the categories were never jumbled.

Mr. ROGERS. What I mean is that there was a definite pattern of the way these would fall when the button was punched to turn them around?

Mr. FELSHER. Yes, there was a mechanical pattern.

Mr. ROGERS. A mechanical pattern.

On one or two occasions when you almost got caught at this, you had to switch that pattern, did you not?

Mr. FELSHER. I am not sure I understand.

Mr. ROGERS. What I mean is that if a man was anticipating what pattern would be next, and almost won, then you switched the pattern so that the category that he was expecting to come up did not come up?

Mr. FELSHER. No. Once those category cards were inserted in the machine—once the category cards were inserted in the machine and that was done several hours before the show was on the air.

Mr. ROGERS. Could they not be changed while the show was going on without anyone seeing what was going on?

Mr. FELSHER. I imagine they could have. It would have been a very time-consuming process. I do not think it could have been done successfully.

Mr. ROGERS. Did not one of your contestants complain about that category pattern being changed at one time because he did lose?

Mr. FELSHER. The only complaint I remember was from the husband of a contestant and it was entirely invalid.

Mr. ROGERS. It was entirely invalid?

Mr. FELSHER. That complaint was. I don't remember any other.

Mr. ROGERS. Did he complain that the pattern had been changed?

Mr. FELSHER. No. He said that the category that had appeared in a certain square at the end of 1 week's program did not appear in the same square at the beginning of the next week's program, but it did.

Mr. ROGERS. Did Captain O'Rourke complain about the changing—was Captain O'Rourke on your program?

Mr. FELSHER. Yes; he was.

Mr. ROGERS. Did he complain about the changing of a category?

Mr. FELSHER. Not to my knowledge.

Mr. ROGERS. Did the man we saw today—who was that?

Mr. FELSHER. That was Captain O'Rourke.

Mr. ROGERS. As far as you know, he did not complain to you about it?

Mr. FELSHER. That is right.

Mr. ROGERS. You made no remarks to anyone about the fact that a category had been changed in order to make it more difficult for Captain O'Rourke to answer?

Mr. FELSHER. Sir, to the best of my knowledge I did not make any such remarks.

Mr. ROGERS. You would remember if it had happened, would you not, Mr. Felsher?

Mr. FELSHER. I should think I would.

Mr. ROGERS. Yes; I would, too.

With reference to the fine people you talk about, do you mean those fine people because they were willing to enter into an agreement with you to dupe the American people?

Mr. FELSHER. No; that is not what I meant at all.

I mean that all their lives they have been good citizens, good people, as far as I know. They have done good work. They lived fine lives as far as I know. They have not hurt anyone ever maliciously that I know of.

Mr. ROGERS. You do feel that this proceeding that you were engaging in was a deceitful and fraudulent procedure insofar as what you were advertising it to be, do you not, Mr. Felsher?

Mr. FELSHER. In today's context, I think I would have to say that.

Mr. ROGERS. What do you mean, "in today's context"?

Mr. FELSHER. I mean at the time this show was on the air, many other shows of a similar type were on the air and it was rather accepted in the entire industry that this was the way these shows are done.

Mr. ROGERS. You mean, then, that if you had not been caught and brought before the grand jury and before this committee, you would still be operating those shows under the feeling that they were all right?

Mr. FELSHER. No.

As I mentioned earlier, this practice was discontinued on Tic-Tac-Dough several months before any investigation was ever started.

Mr. ROGERS. It was discontinued because you felt that the show had won a place and had a listening audience and you did not need to do it?

Mr. FELSHER. The show had been established; yes.

Mr. ROGERS. In other words, you were not prompted by any qualms of conscience to make that change, were you, Mr. Felsher?

Mr. FELSHER. No; I can't say that I was.

Mr. ROGERS. You did not hear a voice out of the heavens saying, you are doing wrong, Mr. Felsher; correct this? You did it because you thought you were going to make money without having to engage in that questionable practice, did you not?

Mr. FELSHER. I did it because I felt the show could continue as it was at that point.

Mr. ROGERS. With regard to your discussions with these people that had been contestants on that show, you did talk to them and tell them not to tell the grand jury or the district attorney's office that the show had been fixed, did you not, Mr. Felsher?

Mr. FELSHER. Most of them, yes.

Mr. ROGERS. Did you use the terms "Tell the truth, that the show was not fixed and that you did not receive the questions and answers beforehand"?

Mr. FELSHER. In essence, that is what I said.

Mr. ROGERS. You talked to some people who were minors, did you not, Mr. Felsher?

Mr. FELSHER. Yes.

Mr. ROGERS. You knew they were minors when you put them on the show, did you not?

Mr. FELSHER. Yes.

Mr. ROGERS. You knew they were minors when you talked them into engaging in this practice, did you not?

Mr. FELSHER. Yes.

Mr. ROGERS. You knew they were minors when you undertook to get them to commit perjury, did you not, Mr. Felsher?

Mr. FELSHER. Yes.

Mr. ROGERS. Was anything ever said to you about the possible prosecution of yourself for contributing to the delinquency of a minor?

Mr. FELSHER. No.

Mr. ROGERS. Nothing was ever said to you about that at all?

Mr. FELSHER. No.

Mr. ROGERS. You knew at the time you were trying to get these people, whether minors or otherwise, to do this, that if they did do it you would be subject to prosecution for subornation of perjury, did you not?

Mr. FELSHER. I learned that fact. I think it was after I talked to these people, but I am not sure of that.

Mr. ROGERS. You did not know when you talked to them you could have been prosecuted for attempted subornation of perjury?

Mr. FELSHER. I have never heard of subornation of perjury.

Mr. ROGERS. You were discharged by NBC, as I understand it, when you refused to sign an affidavit to the effect that these alleged malpractices did not go on prior to these programs, is that correct?

Mr. FELSHER. Yes.

Mr. ROGERS. Mr. Felsher, you had stated that they had not gone on, had you not?

Mr. FELSHER. To whom?

Mr. ROGERS. You had stated orally to people who had asked you that these practices had not gone on?

Mr. FELSHER. No one at NBC asked me.

Mr. ROGERS. I do not mean NBC. I mean anyone.

Mr. FELSHER. I so stated to the grand jury.

Mr. ROGERS. Why did you refuse to sign an affidavit?

Mr. FELSHER. I had since gone back to the grand jury and told them the truth.

Mr. ROGERS. And told them the truth?

Mr. FELSHER. Yes.

Mr. ROGERS. Did the NBC people who asked you to sign this affidavit say anything to you about why they wanted the affidavit?

Mr. FELSHER. Mr. Ervin, and this is a paraphrase of the conversation but he said to me, as you know, there will be an investigation of quiz shows by the House Subcommittee on Legislative Oversight, and in that regard I would like you to sign an affidavit that you have never given questions or answers to any contestants. I said I would consult with my attorney.

Mr. ROGERS. Did they know that you had been before the grand jury and had told the absolute truth?

Mr. FELSHER. He said that he did not know that I had ever been before the grand jury, but as I pointed out this morning in response to a question, I had told someone at NBC, one of my superiors, that I was going to the grand jury.

Mr. ROGERS. Did the people at NBC know that, had you told the truth, you would have had to say that the people had been furnished with the questions and answers?

Mr. FELSHER. If I told the truth to whom?

Mr. ROGERS. To the grand jury or anyone else.

Mr. FELSHER. Mr. Ervin said that since I would not sign the affidavit, he must assume that I had given questions and answers to people.

Mr. ROGERS. Did anyone know prior to that you anyone connected with NBC, that you had given the question and answer, so far as you know?

Mr. FELSHER. So far as I know, they didn't. I was never asked.

Mr. ROGERS. You never conveyed that information to them voluntarily or otherwise?

Mr. FELSHER. No.

Mr. ROGERS. When did this happen that you were discharged by NBC?

Mr. FELSHER. A week ago today.

Mr. ROGERS. When was it that you had been before the grand jury to clean up your prior testimony?

Mr. FELSHER. I don't recall the exact date. I think Mr. Lishman this morning said it was in April. But I am not sure.

Mr. ROGERS. In April?

Mr. FELSHER. Yes.

Mr. ROGERS. In other words, it had been several months?

Mr. FELSHER. If it had been in April, it was several months, yes.

Mr. LISHMAN. April 2.

Mr. ROGERS. April 2, Mr. Lishman says.

You were before the grand jury twice, Mr. Felsher?

Mr. FELSHER. Yes, sir.

Mr. ROGERS. When did you go the first time?

Mr. FELSHER. If I can appeal to Mr. Lishman again.

Mr. LISHMAN. The first time was October 27, 1958.

Mr. ROGERS. October 27, 1958. That is when you committed perjury?

Mr. FELSHER. Yes.

Mr. ROGERS. Then you went back April 2, 1959, and purged yourself of the perjury and told the truth?

Mr. FELSHER. Yes, I did.

Mr. ROGERS. And you continued to work for NBC from and after that time until October the what?

Mr. FELSHER. Until last Friday.

Mr. ROGERS. Last Friday. That would be October 3, would it not?

Mr. FELSHER. Second, I believe.

Mr. ROGERS. October 2, 1959?

Mr. FELSHER. Yes.

Mr. ROGERS. Did the NBC people know you had been to the grand jury on April 2?

Mr. FELSHER. I don't know. I don't think so. But I don't know.

Mr. ROGERS. They made no inquiries about it and you volunteered no information concerning it?

Mr. FELSHER. That is right.

Mr. ROGERS. Who was your immediate superior?

Mr. FELSHER. That is hard to say. At different times—many people like to be immediate superiors.

Mr. ROGERS. That seems to be the difficulty in this whole hearing. There are too many buffers around everyone. It is difficult to get to them.

Mr. FELSHER. I imagine my immediate superior on the program was Edward Pearce.

Mr. ROGERS. Who was the head man of the groups, if it was divided into groups? Who was the head man?

Mr. FELSHER. I was never able to determine that adequately.

Mr. ROGERS. Your immediate commander was the only one you knew about insofar as rank was concerned?

Mr. FELSHER. No. There were many, not many but several men who were all my superiors and at one time or another they all exercised authority.

Mr. ROGERS. But your immediate superior was who?

Mr. FELSHER. Mr. Ed Pearce?

Mr. ROGERS. Did you go to the grand jury during working hours?

Mr. FELSHER. I don't remember. Our program was put on tape every other week and during the alternate weeks I had no real working hours. I don't remember whether my second appearance at the grand jury was during the so-called offweek or during a taping week. The first appearance was during the taping week and that is the time I did tell someone I was going down to the grand jury.

Mr. ROGERS. But you do not remember who you told?

Mr. FELSHER. Oh, yes.

Mr. ROGERS. Who?

Mr. FELSHER. That I was going to the grand jury?

Mr. ROGERS. Who?

Mr. FELSHER. Mr. Aaron.

Mr. ROGERS. What was his title?

Mr. FELSHER. His title was manager of daytime program administration.

Mr. ROGERS. He did not ask you what you were going for?

Mr. FELSHER. I don't know.

Mr. ROGERS. Did you tell him you were going down there to tell the truth?

Mr. FELSHER. I told him I was going down to testify at the grand jury.

Mr. ROGERS. But you did not tell him what you were going to tell the grand jury?

Mr. FELSHER. He did not ask and I didn't tell him.

Mr. ROGERS. Did he ask you when you got back?

Mr. FELSHER. I was there until quite late in the afternoon and there was an evening program to produce that night and I did not see him again until the middle of the presentations for that night's programs and there were many other things to discuss at that time. The issue was not raised again.

Mr. ROGERS. He never at any time asked you about it after that time?

Mr. FELSHER. Not to my recollection.

Mr. ROGERS. That is all, Mr. Chairman; thank you.

Mr. MACK (presiding). Mr. Springer.

Mr. SPRINGER. Mr. Felsher, I would like to run through this sequence of events to be sure I am right.

You became producer of the daytime program in November 1956?

Mr. FELSHER. Yes.

Mr. SPRINGER. You left that and became night producer in November 1957?

Mr. FELSHER. What month, sir?

Mr. SPRINGER. November 1957.

Mr. FELSHER. It was August or September 1957?

Mr. SPRINGER. August or September 1957?

Mr. FELSHER. Yes, sir.

Mr. SPRINGER. When did you go to the daytime program?

Mr. FELSHER. It was sometime early in 1958 and I do not know the exact date.

Mr. SPRINGER. NBC bought this in May 1957?

Mr. FELSHER. Yes; I think so.

Mr. SPRINGER. So, about the same time you came back again on the daytime program?

Mr. FELSHER. No. It was a year later. Perhaps 8 or 9 months later. It was early in 1958.

Mr. SPRINGER. September or October of 1958?

Mr. FELSHER. No; early in 1958.

Are you asking me, sir, when I took over the daytime show again?

Mr. SPRINGER. Yes.

Mr. FELSHER. It was early in 1958, but I don't recall the exact month.

Mr. SPRINGER. NBC had bought it in 1957, the year before that?

Mr. FELSHER. Yes.

Mr. SPRINGER. NBC actually took over production in September or October 1958?

Mr. FELSHER. Yes.

Mr. SPRINGER. They brought in their own employees?

Mr. FELSHER. They installed some supervisory employees. All of the people who had worked on the program up until that time remained. Almost all the people.

Mr. SPRINGER. Were those supervisory employees superior to you?

Mr. FELSHER. They put a supervisory employee on each of the three programs remaining. One of those people was superior to me.

Mr. SPRINGER. Did you answer to him?

Mr. FELSHER. Yes.

Mr. SPRINGER. Who was he?

Mr. FELSHER. They changed, too.

The first one was there only 2 or 3 days; he was Mr. Goetz.

Mr. SPRINGER. Who succeeded Mr. Goetz?

Mr. FELSHER. Mr. Aaron.

Mr. SPRINGER. How long was Mr. Aaron there?

Mr. FELSHER. I can't tell you exactly.

Mr. SPRINGER. How many weeks or months?

Mr. FELSHER. I really don't know.

Mr. SPRINGER. Who succeeded Mr. Aaron?

Mr. FELSHER. Mr. Pearce.

Mr. SPRINGER. How long did Mr. Pearce stay?

Mr. FELSHER. He still is in charge of the program.

Mr. SPRINGER. During the time that these three NBC employees were running the program you answered, so to speak, to them, am I correct on that?

Mr. FELSHER. Yes.

Mr. SPRINGER. Did this process of giving the questions and answers continue all that time?

Mr. FELSHER. No.

As I think I pointed out earlier, it had ceased a long time prior to NBC's taking over the daytime program.

Mr. SPRINGER. It ceased prior to NBC's taking it over?

Mr. FELSHER. Yes. Four or five or six months before. On the day-time program.

Mr. SPRINGER. At the time they took it over, were they aware that you had been before the grand jury?

Mr. FELSHER. One person was aware, unless he had forgotten.

Mr. SPRINGER. Who was that?

Mr. FELSHER. Mr. Aaron.

Mr. SPRINGER. Did you tell Mr. Aaron what you testified to before the grand jury?

Mr. FELSHER. What I had testified to?

Mr. SPRINGER. Yes.

Mr. FELSHER. No, the question was never raised.

Mr. SPRINGER. Did you ever talk with a Mr. Burns who is an attorney at NBC in the office of Mr. Ervin, the general attorney?

Mr. FELSHER. In the office of Mr. Ervin, no.

Mr. SPRINGER. You never talked to Mr. Burns or saw Mr. Burns?

Mr. FELSHER. Not in Mr. Ervin's office.

Mr. SPRINGER. Did you ever talk to Mr. Burns?

Mr. FELSHER. He used to come up to the Production Services Co. offices on various occasions and I am sure I have talked to him.

Mr. SPRINGER. Did you know that he was an attorney?

Mr. FELSHER. I don't know whether I knew that or not.

Mr. SPRINGER. What were your conversations with Mr. Burns about?

Mr. FELSHER. I don't know that either. I did not speak to him very often. That I am sure. It was briefly.

Mr. SPRINGER. Did you know that Mr. Burns was a liaison between the district attorney's office and the attorneys for NBC?

Mr. FELSHER. No.

As I recall, the only thing I knew about Mr. Burns' function had to do with the subpoenaing of records by the district attorney. When they wanted some of our records, I think that information was transmitted to our office by Mr. Burns. I think so.

Mr. SPRINGER. Mr. Burns, not subject to subpoena, took the records from your office and delivered them to the district attorney's office; is that not true?

Mr. FELSHER. He might have. I really don't know how they were delivered. I remember on one occasion representatives of the district attorney's office came to our office and took some of the records.

Mr. SPRINGER. Did you at any time ever talk with Mr. Burns about what your testimony had been before the grand jury?

Mr. FELSHER. I don't think I did.

Mr. SPRINGER. You are not sure about that, are you, Mr. Felsher?

Mr. FELSHER. No, I am really not sure of that.

Mr. SPRINGER. You would not say you did not talk to him about what your testimony was before the grand jury, would you?

Mr. FELSHER. I really don't remember. I absolutely don't.

Mr. SPRINGER. Can you remember on the occasion when Mr. Burns came to your office what documents and papers he took from your office and delivered to the district attorney?

Mr. FELSHER. No, I don't know specifically.

I can tell you essentially which of our records were sent down.

Mr. SPRINGER. Can you do that?

Mr. FELSHER. They took a list of all the contestants who had been on the program and the amounts of money won and the card catalog containing the names and addresses of all the contestants who had been on the program.

Mr. SPRINGER. Did you ever talk with anyone else from the general attorney's office other than Mr. Burns?

Mr. FELSHER. Concerning what, sir?

Mr. SPRINGER. Concerning anything.

Mr. FELSHER. Do you mean socially or professionally?

Mr. SPRINGER. I mean about any business.

Mr. FELSHER. Yes.

Mr. SPRINGER. Who else?

Mr. FELSHER. I talked once with a man named Mr. Raub and once with a man named Erb. I think his name is Erb, but I am not sure.

Mr. SPRINGER. What did they ask you at that time?

Mr. FELSHER. Both conversations were brief and they were interested—they told me that the subcommittee was interested in the addresses of three contestants who had been on the program on what we called the "Grand Championship."

Mr. SPRINGER. But never at any time did Mr. Burns or anybody else, either in legal capacity or otherwise, ever ask you what your testimony had been before the grand jury the first time?

Mr. FELSHER. If they did, I absolutely do not remember it. I think I would remember it.

Mr. SPRINGER. Did Mr. Burns or any other representative of NBC in a legal capacity or otherwise talk with you about what your testimony was before the grand jury on the occasion when you purged yourself of perjury—the second occasion?

Mr. FELSHER. I really don't think so.

Mr. SPRINGER. You, in fact, say that you do not recollect; is that correct?

Mr. FELSHER. Yes; that is so. I don't remember.

Mr. SPRINGER. After the grand jury investigated all the TV quiz programs, Mr. Felsher, did NBC install what was called a unit manager?

Mr. FELSHER. There had always been a unit manager assigned to the program. I think NBC has a unit manager assigned to every program.

Mr. SPRINGER. What is his duty?

Mr. FELSHER. As I know his duties, they are primarily functional. They oversee—

Mr. SPRINGER. After this difficulty broke in the paper and there was a grand jury investigation, did the duties of the unit manager change?

Mr. FELSHER. Not to my knowledge.

Mr. SPRINGER. It is my understanding from your previous testimony in answer to questions which I put to you that this practice of supplying questions and answers was discontinued before NBC took over; is that correct?

Mr. FELSHER. On daytime "Tic-Tac-Dough"; that is quite correct.

Mr. SPRINGER. Mr. Felsher, how old are you now?

Mr. FELSHER. I will be 32 very shortly.

Mr. SPRINGER. How long have you been in the television industry?

Mr. FELSHER. Seven or eight years, I would say.

Mr. SPRINGER. In that time you have had several years' experience in production besides this program; have you not?

Mr. FELSHER. Yes.

Mr. SPRINGER. Did the industry have accepted standards of personality, situation suspense, and so forth, that were time proven to boost the TV ratings?

Mr. FELSHER. I don't think there was ever a formula devised. It was a matter of subjective consideration.

Mr. SPRINGER. Do you not care to expand on that answer?

Mr. FELSHER. I would say in the instance of "Tic-Tac-Dough," I would like a person who was articulate and who had a sense of humor and who had intelligence and a reasonable amount of information and a reasonable amount of extraversion.

Mr. SPRINGER. Was it not adherence to these standards of show construction that resulted in the practice of fixing or predetermining the shows?

Mr. FELSHER. Could I ask you to explain that or to ask it in another way?

Mr. SPRINGER. To put it another way: Was it not a fact that you used these standards of show construction that resulted in the necessity of fixing the program?

Mr. FELSHER. No; I don't think those standards had anything to do with it.

Mr. SPRINGER. Let me ask you that in another way.

Was there not a set formula for a TV quiz show that was at all times the overriding consideration along with the budget?

Mr. FELSHER. I think it was the purpose of any program on the air to entertain the audience and to keep them excited, stimulated, and anxious to continue to watch the program and to watch it the following week and the week after that.

On the basis of that each individual producer, I would think, devised his own formula for a means to attain that end.

Mr. SPRINGER. You have answered as to the daytime program.

To your knowledge, did the practices which had been in effect prior to NBC taking over continue on the night program after NBC took over?

Mr. FELSHER. No; it did not.

Mr. SPRINGER. Do you know that of your own knowledge?

Mr. FELSHER. I know it for myself and of myself. I cannot testify for others.

Mr. SPRINGER. You understood the general tenor of the three questions I put to you just previous to this last one, did you not, Mr. Felsher, as to the practices that were engaged in in order to get a good TV rating?

Mr. FELSHER. I thought you were referring to in order to ascertain what would make a good contestant.

Mr. SPRINGER. You followed the ratings very carefully; did you not?

Mr. FELSHER. Quite.

Mr. SPRINGER. In your testimony before the grand jury I think you used the words: "Yes, we live and die by them." Is that about right?

Mr. FELSHER. That is about right. Although I understand the newest policy—yes, that is about right.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Flynt.

Mr. FLYNT. Mr. Felsher, what was the first quiz show you were connected with?

Mr. FELSHER. Tic-Tac-Dough.

Mr. FLYNT. You were with it approximately how many years?

Mr. FELSHER. Approximately 3 years and a quarter, 3 years and a couple of months.

Mr. FLYNT. On the first television show of Tic-Tac-Dough, what controls were exercised on the first two contestants?

Mr. FELSHER. I have no idea. I was not producer of the program at that time.

Mr. FLYNT. On the first one that you produced?

Mr. FELSHER. On the first one that I produced?

Mr. FLYNT. Yes.

Mr. FELSHER. As far as I know, there were no controls exercised on that show.

Mr. FLYNT. When did the pattern of controls enter into this particular program?

Mr. FELSHER. As far as I am concerned?

Mr. FLYNT. As far as you know of your own knowledge.

Mr. FELSHER. I would say within a month after I became producer, but I cannot be any more specific than that.

Mr. FLYNT. Did it continue uninterruptedly until you ceased your connection with Tic-Tac-Dough?

Mr. FELSHER. Oh, no, not at all. You are speaking of the daytime version?

Mr. FLYNT. I am speaking of the one you had to do with.

Mr. FELSHER. The one I began with was the daytime version. That was the only one I was connected with for about a year.

Mr. FLYNT. So there were occasions when it was a legitimate bona fide contest of knowledge and skill?

Mr. FELSHER. In terms of daytime show, most occasions were legitimate and bona fide.

Mr. FLYNT. Then it was the nighttime show that the controls were exercised to a greater degree?

Mr. FELSHER. To a greater degree than the daytime show.

Mr. FLYNT. Would you say in practically all instances?

Mr. FELSHER. No. I was asked earlier today if it had been on 75 percent or more of the nighttime shows and I said that was approximately correct.

Mr. FLYNT. Seventy-five percent of the nighttime Tic-Tac-Dough showings?

Mr. FELSHER. Yes.

I think the question was, Was one or more contestants given help on 75 percent or more of the nighttime programs? and I said that is approximately the correct figure.

Mr. FLYNT. Was it customary for the master of ceremonies on the program at the beginning of each show to go through a routine statement that it was completely unrehearsed and that nobody had any idea what the answers were, or was that just assumed?

Mr. FELSHER. No, I don't think we ever made any such statement.

Mr. FLYNT. That was not ever made as such?

Mr. FELSHER. No.

Mr. FLYNT. But it was held out to be a legitimate contest of knowledge?

Mr. FELSHER. It was what?

Mr. FLYNT. A legitimate contest of knowledge between the participants.

Mr. FELSHER. That is what it was, that is what its public purpose was.

Mr. FLYNT. I did not understand you.

Mr. FELSHER. Did you ask if that is how it was posed?

Mr. FLYNT. Yes.

Mr. FELSHER. Yes.

Mr. FLYNT. I do not think I have anything else, Mr Chairman.

Mr. DEROUNIAN. Mr. Felsher, about the time that you were first notified to appear before the grand jury, you did try to get in touch with those contestants to whom the questions and answers had been supplied, did you not?

Mr. FELSHER. Yes, sir; most of them.

Mr. DEROUNIAN. You did not try to get in touch with those contestants to whom no questions and answers had been supplied?

Mr. FELSHER. Yes, I contacted many of them, too.

Mr. DEROUNIAN. What was the purpose of contacting those who had been honest contestants?

Mr. FELSHER. I was frightened myself at the prospect of any dealings with a grand jury. I had not had any experience with anything in that line before that. I thought that many of these people who would be getting subpoenas would also be frightened. I just wanted them to be prepared to get a subpoena, to know that they might be subpoenaed and not be shocked.

Mr. DEROUNIAN. Did you not know that the honest contestants would tell what they knew?

Mr. FELSHER. I knew that they would tell what they knew.

Mr. DEROUNIAN. You also knew that the dishonest contestants might tell what they knew?

Mr. FELSHER. Yes.

Mr. DEROUNIAN. No further questions.

The CHAIRMAN. Mr. Moss.

Mr. MOSS. Mr. Felsher, you became producer of Tic-Tac-Dough following Mr. Freedman, is that correct?

Mr. FELSHER. Yes.

Mr. MOSS. Were you associated with the show during the time Mr. Freedman was producer?

Mr. FELSHER. Yes, I was.

Mr. MOSS. Associate producer?

Mr. FELSHER. I don't remember whether I had that title or not.

Mr. MOSS. Was this a controlled show during that period?

Mr. FELSHER. If you want me to make a guess, I would say "yes."

Mr. MOSS. You have no knowledge?

Mr. FELSHER. I really don't know if I was told when I was about to take over the show that this was the case or not. I might have been.

Mr. MOSS. How long were you with Barry & Enright before becoming producer of "Tic-Tac-Dough"?

Mr. FELSHER. Two years, approximately.

Mr. Moss. Were you with other producing organizations prior to going with Barry & Enright?

Mr. FELSHER. Several years before that I had been with "Show of Shows."

Mr. Moss. That was not a quiz show?

Mr. FELSHER. No.

Mr. Moss. I am very much interested in the process by which this knowledge that most quiz shows are controlled shows is transmitted or communicated from one person to another.

I have heard quite a number of people say that it was so generally known that it was not even necessary to instruct staff of the fact. You have just indicated that you do not even know whether Mr. Freedman told you it was a controlled show. You just sort of knew it. You took it for granted.

How is this principle transmitted within a producing organization?

Mr. FELSHER. I think I said he might have told me, and I don't know whether he did or not. That is in terms of our organization.

In terms of the entire industry, I suppose it seemed as incredible to us as it does to the public at large that people could know so many answers.

Mr. Moss. That what?

Mr. FELSHER. That people could know so many answers.

I imagine that is what stimulated the belief that this was a widespread industry practice.

Mr. Moss. You have indicated that some months prior to NBC's taking over the Barry & Enright shows, that the policy of control had been abandoned in the daytime; is that correct?

Mr. FELSHER. Yes, sir.

Mr. Moss. Was it completely abandoned?

Mr. FELSHER. Completely abandoned.

Mr. Moss. None of the subtle means of instruction was employed even following the abandonment of giving exact questions and answers?

Mr. FELSHER. Could I ask you what you mean by subtle means of instruction?

Mr. Moss. We have had descriptions of technique which indicate that there are certain subtleties to it. Careful interviewing of contestants to determine their general scope of knowledge and the areas where questions might be prepared and get the most answers.

Mr. FELSHER. I can tell you categorically that I employed no such techniques subsequent to the time I mentioned.

Mr. Moss. None at all?

Did you interview contestants?

Mr. FELSHER. I interviewed everyone who ever appeared on the program.

Mr. Moss. Exhaustively?

Mr. FELSHER. Five to ten minutes.

Mr. Moss. Five or ten minutes?

Mr. FELSHER. Yes. Fifteen perhaps.

Mr. Moss. Was it the reason that you wanted a quicker turnover of contestants on the daytime show?

Mr. FELSHER. No; not at all. Far from it. I never wanted a quick turnover of contestants on any show. The reason for the 10-minute

or 15-minute interview was solely to determine the adequacy of the personality in terms of appearing on television.

Mr. MOSS. You continued the controls on the nighttime show?

Mr. FELSHER. As I pointed out earlier, the nighttime show was a very young show. It was an infant show at that time and not as well established as the daytime program.

Mr. MOSS. Did you feel that you had to have better personalities in order to build up viewer interest?

Mr. FELSHER. The feeling always was that the best personalities would build the best viewer interest.

Mr. MOSS. It was necessary to give them assistance in order to assure that they would be attractive personalities?

Mr. FELSHER. No. I think the personalities were attractive for the most part in and of themselves.

Mr. MOSS. Let us say for the exploitation of the personalities.

Mr. FELSHER. I would say in order to insure the continuation of that personality on the program.

Mr. MOSS. Did you finally abandon controls on the nighttime show?

Mr. FELSHER. Yes.

Mr. MOSS. How long ago?

Mr. FELSHER. September of 1958 or August of 1958, sometime in that area.

Mr. MOSS. Following the grand jury action?

Mr. FELSHER. Following—it was much before the grand jury convened. I think the grand jury convened in October.

Mr. MOSS. I think it convened the 18th of September 1958.

Mr. FELSHER. As I best recall, it was prior to the convening of the grand jury.

Mr. MOSS. The district attorney's office showed interest in August of 1958.

Mr. FELSHER. Was it approximately that time?

Mr. MOSS. Have you completely abandoned controls on the nighttime show? How about the interviews of the contestants?

Mr. FELSHER. The interviews were as I just described.

Mr. MOSS. By tests of contestants?

Mr. FELSHER. Everyone who applied for the program was required to take a test. I never looked at the test myself. I saw only the final score.

Mr. MOSS. You selected all contestants?

Mr. FELSHER. I selected all contestants after NBC took over direct supervision of the programs.

Mr. MOSS. Has there been any marked difference in the shows since the controls were abandoned?

Mr. FELSHER. The nighttime show did not last much longer after that. The daytime show I think was every bit as good afterward as it was before.

Mr. MOSS. Do you think it is possible to operate day shows as a matter of course without controls?

Mr. FELSHER. I can only speak for the one show I produced. I would say that on the basis of the experience I have had with "Tic-Tac-Dough" in the past year and a half since controls were stopped, or approximately a year and a half, that it is possible for "Tic-Tac-Dough." Probable, in fact.

Mr. MOSS. Were any of the contestants selected by you following this abandonment of the policy of control screened by others?

Mr. FELSHER. There was always a preliminary screening. Everyone who passed the test with a high enough score was screened preliminarily by someone else on the staff.

Those applicants recommended by this person were then interviewed by me.

Mr. MOSS. Was the staff person who did the screening a person who reported to you routinely, one supervised by you?

Mr. FELSHER. I was his superior; yes. I didn't see him too often.

Mr. MOSS. What type of screening interviews were conducted in this instance, in this preliminary step?

Mr. FELSHER. Relatively the same as I conducted. He tried to determine the appeal of the personality.

Mr. MOSS. Were those extensive interviews?

Mr. FELSHER. I think they were much more brief than the ones I conducted. I think perhaps they were 5 minutes or less.

Mr. MOSS. That is all I have, Mr. Chairman.

The CHAIRMAN. Mr. Devine.

Mr. DEVINE. Mr. Felsher, this word "control" intrigues me. Is that a term generally used by production men in television? Is it common parlance, or is that a word devised to give some respectability to what is commonly known as "the fix"?

Mr. FELSHER. The word "control" has come into much greater usage in the past, since September of 1958.

Mr. DEVINE. Since this information has been developed by the grand jury?

Mr. FELSHER. Yes. On the other hand, I must say that I don't remember the word "fix" being used too often prior to that.

Mr. DEVINE. You indicated that on perhaps 75 percent or up to 75 percent of the evening shows you gave some assistance to some of the contestants. Was it your normal practice to give assistance to both contestants on the same program, or just to the one you expected to prevail that evening?

Mr. FELSHER. Normally it was one person.

Mr. DEVINE. Normally to one?

Mr. FELSHER. Yes.

Mr. DEVINE. Did you on some occasions give assistance to both contestants when you expected them to tie?

Mr. FELSHER. I will say "yes, on some occasions," but I would like to add, I think I mentioned earlier today that there were many, many, many ties on our programs where neither contestant had received any assistance at all.

Mr. DEVINE. When neither had received any assistance from you?

Mr. FELSHER. From anyone, as far as I know.

Mr. DEVINE. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Mr. Felsher, you say that the fixing of the program was discontinued some time before NBC took over. Can you remember on or about what date this practice was discontinued?

Mr. FELSHER. It was in the spring.

Mr. SPRINGER. Of 1958?

Mr. FELSHER. Of 1958.

Mr. SPRINGER. You continue to be producer?

Mr. FELSHER. Yes.

Mr. SPRINGER. Did the shows continue about the same as they did before?

Mr. FELSHER. How do you mean, sir?

Mr. SPRINGER. Did you have about the same number of ties?

Mr. FELSHER. I would say so. I would have to look at every kinescope since, but it is my recollection that there were about the same number.

Mr. SPRINGER. Did people win approximately the same amount of money?

Mr. FELSHER. As I pointed out earlier this morning, the man who won the greatest amount of money ever won on "Tic-Tac-Dough" occurred during that time.

Mr. SPRINGER. Mr. Felsher, how can you explain that there were just as many ties and people won just as much money after the practices were discontinued—and you say they were discontinued—as before?

Mr. FELSHER. I can't explain it.

Mr. SPRINGER. That is all, Mr. Chairman.

Mr. MOSS. Mr. Chairman.

Mr. CHAIRMAN. Mr. MOSS.

Mr. MOSS. Did I understand you, Mr. Felsher, to say in response to Mr. Springer's question that the practice was discontinued in the spring of 1958?

Mr. FELSHER. On the daytime program.

Mr. MOSS. When was it discontinued on the nighttime?

Mr. FELSHER. In August or September of the same year.

Mr. MOSS. At the end of September?

Mr. FELSHER. I think it was earlier. I can't be pinpointed to a specific date because I just don't remember.

Mr. MOSS. I am looking at a compilation which would indicate that it continued through to the end of September. Did you fix both contestants when you expected to develop ties as a matter of course?

Mr. FELSHER. In some instances I did; in some I didn't.

Mr. MOSS. Where you had a series of ties running over quite a number of weeks, repeated ties, were those possible without fixes?

Mr. FELSHER. Let me answer that by comparing the nighttime show with the daytime show. The nighttime show was on once a week. The daytime show was on daily. We have had instances on the daytime program of 3 or 4 consecutive days of ties which would be equivalent to 3 or 4 consecutive weeks of ties on the nighttime program. In terms of those 3 or 4 consecutive days of ties, in many instances there was no assistance given at all.

Mr. MOSS. What is the maximum number of ties that you developed on your evening program?

Mr. FELSHER. I don't know. I think on the kinescope you showed this morning there—I don't even remember that—I think he said 8 or 9 or 10.

Mr. MOSS. Were those fixed? Did they come about naturally or were they fixed?

Mr. FELSHER. May I ask the chairman a question?

Mr. MOSS. Certainly you can ask the Chairman a question.

The CHAIRMAN. Did you have a question to ask?

Mr. MOSS. He, in response to a question of mine regarding the number of ties, said that the show we viewed this morning was a show where you had eight or nine ties. My question was, was that as the result of a fix?

Mr. FELSHER. I would like to respectfully ask that I not be required to answer that question because I might damage the reputation of an innocent person.

The CHAIRMAN. Mr. Moss, do you insist on it?

Mr. MOSS. Mr. Chairman, I think not to insist would be rather inconsistent. This is a question which developed quite logically from the response of the witness.

The CHAIRMAN. I think under the circumstances since it was not objected to this morning when the kinescope was shown and everybody saw it, everybody saw it when it was run, you explained generally, referring to the kinescope, and since there cannot be any secrecy of the kinescope, since it was shown this morning—

Mr. FELSHER. I did not know which kinescope was going to be shown.

The CHAIRMAN. You saw it.

Mr. FELSHER. As it was turned on, yes.

The CHAIRMAN. You saw it and following you referred your answers, you said like you saw on the kinescope.

Mr. FELSHER. It was pointed out before it was shown to familiarize the members of the committee with the way the program operated.

Mr. MOSS. Mr. Chairman, the show this morning was of a series of ties as indicated by the witness in response to my question. Eight or nine, I believe, were his words. I then asked if the ties in that instance were brought about as a result of a fix of the contestants, and in view of the manner in which the testimony developed, I do insist upon an answer.

Mr. FELSHER. I would like to respectfully ask that I be allowed to answer that question in executive session.

The CHAIRMAN. Mr. Moss, in view of the fact that we took Mr. Dowd's testimony in executive session, I think it probably would be in keeping with the decision of the committee if the gentleman from California wants an answer to his question, that we take it in executive session.

Mr. MOSS. I do want an answer to the question.

The CHAIRMAN. Very well. Do you have any other questions?

Mr. MOSS. No; that is all.

Mr. FELSHER. May I point out one thing, Mr. Moss, that I am really trying to cooperate as much as I can with this committee.

The CHAIRMAN. We appreciate that. In view of the fact that the committee has decided, and did decide to take Mr. Dowd's testimony in executive session for the reason he gave, the committee has not yet taken action with reference to making that testimony public, so I think the question that Mr. Moss asked you would be in keeping with the testimony that we did take from Mr. Dowd, and he may, when we get into executive session, ask you that question and then you may answer.

Mr. FELSHER. Thank you.

The CHAIRMAN. Will you make yourself available for a little later on so we can get an answer to the final question?

Mr. FELSHER. Thank you very much.

The CHAIRMAN. You may step aside at this time.

Mr. Thomas Fisher, will you be sworn?

Do you solemnly swear the testimony you will give to this committee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FISHER. I do.

**TESTIMONY OF THOMAS K. FISHER, VICE PRESIDENT AND
GENERAL ATTORNEY, CBS TELEVISION NETWORK**

The CHAIRMAN. Please have a seat. Will you state your name to the committee?

Mr. FISHER. Thomas K. Fisher.

The CHAIRMAN. Mr. Fisher, will you give your address?

Mr. FISHER. 139 Devoe Road, Chappaqua, N.Y.

The CHAIRMAN. Will you state your business or profession?

Mr. FISHER. I am vice president and general attorney of the CBS Television Network.

The CHAIRMAN. Mr. Fisher, do you have a statement that you wish to make at the outset?

Mr. FISHER. I do, Mr. Chairman; if I may.

Yesterday morning I received a telephone call from a member of the staff of your committee asking me to be here this morning to answer questions about "For Love or Money," a daytime quiz program which was carried over the CBS Television Network from June 30, 1958, until January 30, 1959, when we removed the program from the air.

In view of the previous testimony before the committee, I hope you will permit me to make a short preliminary statement.

It is clear that there were, behind the scenes, improper practices of one sort or another in a number of the quiz shows created and managed by the independent producers and broadcast by the networks, some of them over the CBS Television Network. As a result, millions of American viewers were deceived. So were we.

This deception of the television audience in this country strikes at the integrity of the networks, as well as that of the independent producers who created the shows. We covet the respect and trust of the American people. It is one of our fundamental beliefs that we have a responsibility to deserve such trust and confidence in everything we do.

Those of you who are lawyers will realize that in our investigations we were restricted by two factors. We had to be reasonably sure of our ground before we could act against a program, because of the enormous potential liability to the outside producers who owned these programs. Also, we were handicapped by the fact that as a private party we do not have subpoena power or the power to get evidence under oath.

Let me summarize briefly our findings and our actions in this matter.

On August 8, 1958, we had a call from the Ted Bates Advertising Agency which represents Colgate-Palmolive Co., informing us that Edward Hilgemeier had visited the Colgate offices the day before and had left there a copy of an affidavit charging that answers had been supplied to a contestant on a quiz program called "Dotto." "Dotto,"

produced by an outside packager, had since January 6, 1958, been on the CBS Television Network as a daytime program 5 days a week. It was also a nighttime program on another network.

I went at once to the Ted Bates agency to determine what facts it had. We had a number of meetings with the producer and his staff, the sponsor and the agency, and on one occasion we met with Mr. Hilgemeier. When he testified yesterday that we had not talked with him, Mr. Hilgemeier was mistaken. The fact is that on August 13, 1958, while we were conferring with counsel for the sponsor and the agency at the Colgate offices, Mr. Hilgemeier appeared and all of us questioned him at some length. With me at that meeting was our general counsel and a lawyer on my staff. A contemporaneous written memorandum shows this fact. I suspect Mr. Hilgemeier was confused because the interview occurred at Colgate's office and he may not have realized that three CBS representatives were there.

Within 1 week of our first learning of the Hilgemeier allegations, working with counsel for the sponsor and agency, we had sufficient evidence to warrant our management's removing "Dotto" from our network and it was removed forthwith. Other witnesses before you yesterday testified that they were never interviewed by any CBS representative. This is true because it was unnecessary to interview additional contestants after we had sufficient evidence to remove the program from the air.

We then proceeded to organize an examination of all quiz programs on the CBS Television Network.

Our program and editing departments were instructed to review with producers of each new quiz show all aspects thereof to determine if there were any misleading implications to the public.

Our editing department was instructed to exercise a continuing surveillance over production practices involved in all quiz programs.

The producers of the quiz programs then on our network were called in and questioned concerning their practices, and we started the process of tightening procedures to be written into our contracts.

An outside independent investigator was retained to interview contestants, and to report promptly anything that might seem suspicious.

When the New York district attorney announced his investigation of the quiz programs, we volunteered to cooperate with his office—and did so.

As a result of our investigations, interviews, and surveillance, the management of the CBS Television Network took action with respect to three other programs—"The \$64,000 Challenge," "Name That Tune," and "For Love or Money." Let me describe briefly what was involved in each case.

On Saturday, September 5, 1958, we had a phone call from a newspaper reporter asking about a story from Tennessee that a contestant on "The \$64,000 Challenge," Rev. C. E. "Stoney" Jackson, had said he had been fed an answer to a question used on "The Challenge." We made an investigation that very day, since the program was scheduled to be broadcast on Sunday, the following day.

I talked on the telephone with Reverend Jackson in Tennessee. Then a meeting was held with the producer of the program and staff members, and with the advertising agencies and sponsors involved.

All of this turned up a sharp conflict in evidence. Lacking conclusive evidence, our management had to decide to let "The Challenge" go on the air the next day as scheduled.

Our investigation continued, however. We began interviewing contestants. During the week, the New York district attorney's office asked that we not continue our interviews on "The Challenge," because that office was investigating this program, and they believed that for us to continue might hamper that official effort. In view of this request, we discontinued our interviews.

As it turned out, "The \$64,000 Challenge" never went on the air again. It had been scheduled for only one more broadcast on our network, after which it was to be transferred to another network. During that very week the Quemoy crisis came to a head. CBS News and CBS-Television network felt that the gravity of the Quemoy situation was such as to require the television network to preempt a regularly scheduled program to make room for a special news program. It was decided to preempt "The \$64,000 Challenge."

Now let me turn to the next episode, one involving "Name That Tune." In November and December of 1958, we found that the tunes played for identification on the program were from categories of music previously determined to be familiar to the contestants. We also found that prior to air time a member of the production staff regularly hummed and asked contestants to identify some of the tunes that they were asked to name on the air.

It was decided by management that the program would not be taken off the air provided that a disclosure of the practice be made to the public on the air. This took place on the "Name That Tune" program on December 22, 1958. Each subsequent program, except six special programs that were broadcast during the summer and were made up of highlights of old programs, has included a brief statement that some of the tunes have previously been identified for the program producer by the contestants. On the opening program of the fall season, the original explanation was again broadcast.

"For Love or Money" was the fourth program involved. In January of this year, our internal surveillance reported the discovery that the "dancing decimal machine," an integral part of the quiz program, had been operated from time to time in such a way as to prevent contestants from having the opportunity to win the maximum dollar amount which appeared to be possible.

We interviewed the stage technician involved. We interviewed the producer and others. When we had enough evidence to warrant removing the program from the air, we did.

I might add, Mr. Chairman, that was on January 30, 1959, when the program had its last broadcast.

It would be ridiculous for me to assert that a better job than we did could not have been done. Looking back on the past, with the benefit of what we have learned, I am sure we should and could have done more. But I believe that some of the steps we have undertaken have resulted and will continue to result in the elimination of questionable practices.

We cannot guarantee perfection, but we can guarantee vigilance. And now, after this summary, let me do my best to answer your questions. Thank you.

Mr. GOODWIN. Mr. Fisher, prior to August 8, 1958, when you received the phone call from the Ted Bates agency to which you just referred, did the CBS Television Network or anyone connected with that network have any knowledge that any of the quiz programs broadcast by that network were fixed to any extent?

Mr. FISHER. In response to an FCC inquiry along the same lines, I replied that we had been in touch with those members of the program department and other personnel that most likely would have had contact with the practice, and we had not found that they did have information to that effect.

Mr. GOODWIN. So your investigation revealed that no person connected with the network, prior to the "Dotto" incident coming to your attention, was aware that the program had been fixed.

Mr. FISHER. To the extent I made that investigation. By that I mean, sir, we just did not examine everyone in CBS.

Mr. GOODWIN. I realize that. When did you first receive this inquiry from the Federal Communications Commission?

Mr. FISHER. I can date these from the Friday, August 8, which I remember well. I think I received the first letter of inquiry from the FCC the following Tuesday or Wednesday.

Mr. GOODWIN. What was the nature of this inquiry? Had they had any specific evidence?

Mr. FISHER. The FCC enclosed a copy of Hilgemeier's affidavit and asked for comment.

Mr. GOODWIN. What was your comment to the Federal Communications Commission after you had conducted your investigation of the "Dotto" show?

Mr. FISHER. Our first comment was, which I made shortly after receiving the first letter, we were in the midst of our investigation, and I outlined briefly what we had done the first Friday night, and what I had done and my assistants had done the following Monday and Tuesday, and stated we would get back to them when we finished the investigation.

Mr. GOODWIN. On or around August 18, did you send to the Federal Communication Commission a letter giving the results of your investigation of the "Dotto" program?

Mr. FISHER. Yes; I believe that was sent in my absence by my assistants.

Mr. GOODWIN. I ask you to identify this document from the files of the Columbia Broadcasting System, if that is the letter which you sent to the Federal Communications Commission?

Mr. FISHER. Yes. This was sent by the assistant general attorney.

Mr. GOODWIN. Will you please tell us what the contents of that letter are?

Mr. FISHER. You wish me to summarize?

Mr. GOODWIN. Read it.

Mr. FISHER. The entire letter?

Mr. GOODWIN. Yes.

Mr. FISHER (reading):

Dear Miss Morris: This will supplement the letter of Thomas K. Fisher, vice president and general attorney of CBS Television, dated August 14, 1958, concerning the matter relating to the "Dotto" program, referred to in your letter of August 11, 1958. I am writing at this time because Mr. Fisher left on his holiday yesterday, Sunday morning, after our investigation had been completed and our decisions made.

Since Mr. Fisher's letter to you, we have obtained evidence that the supplying of answers by Marjeff, Inc., the independent producing company of "Dotto," to certain contestants prior to the telecast occurred in instances other than the one referred to in the Hilgemeier affidavit. In addition, at a meeting with representatives of the producing company on Friday, August 15, these practices were finally admitted by the producing company although they had been denied at our meeting of investigation on the night of August 8. Accordingly, we reached the conclusion, with which the sponsor, Colgate-Palmolive Co., concurred, that the program, with its misleading implications to the public, must be withdrawn immediately. On Saturday, August 16, we exercised the rights reserved to us under our facilities contract with the sponsor's advertising agency and gave notice that the "Dotto" program was no longer acceptable to us as program material. Colgate on the same day notified the producing company that it was cancelling the program, effective immediately, and another program has been substituted beginning today, Monday, August 18.

Because of the urgent desires of the producing company that this matter receive no more publicity than is absolutely necessary, and in the light of the fact that the program is no longer on the air, it is respectfully suggested that, in order not to unduly injure any third person, this letter be placed in the "Not For Public Inspection" file.

If there is any other information you desire in this connection, please let us know.

Respectfully yours,

RICHARD A. FORSLING.

Mr. GOODWIN. To your knowledge was that letter placed in the "Not For Public Inspection" file?

Mr. FISHER. I do not know.

Mr. GOODWIN. To your knowledge has it been made public at any time prior to today?

Mr. FISHER. Not that I know of, sir.

Mr. GOODWIN. Did the Federal Communications Commission make any further inquiries of the investigations you were conducting of your television programs?

Mr. FISHER. Yes, it did. It followed up on the letter that has just been read, asking for additional information with respect to "Dotto" and generally it was what procedures we contemplated to prevent a reoccurrence of the furnishing of answers that occurred on the "Dotto" program.

Mr. GOODWIN. Did the Federal Communications Commission investigator at any time ask you to investigate your other quiz programs to see if they were fixed?

Mr. FISHER. A specific letter of request?

Mr. GOODWIN. Any request directly from the Federal Communications Commission to the Columbia Broadcasting System.

Mr. FISHER. No, except to the extent that the letter—the last sentence to which I referred—might have covered it.

Mr. GOODWIN. Did they ask you about your general security procedures?

Mr. FISHER. I think it was that. I have not read the letter recently. It is difficult for me to recall just exactly what the questions were. They had four or five questions, as I recall.

Mr. GOODWIN. But they did not ask or did not make an independent investigation to your knowledge of any of the other quiz programs that were being produced?

Mr. FISHER. No.

Mr. GOODWIN. In the course of your investigations, did you investigate a quiz program known as "Name That Tune"?

Mr. FISHER. Yes, sir.

Mr. GOODWIN. May I show you this memorandum from the Columbia Broadcasting System files, a copy of which was sent to you, regarding a portion of this investigation and ask you to identify it as such?

Mr. FISHER. Yes, sir, I can.

Mr. GOODWIN. That is a very brief statement. I wonder if you could read that.

Mr. FISHER. This is dated November 28, 1958, from Mr. Forsling to the files, copy to me.

John Casey, a contestant on "Name That Tune" in February, was interviewed this afternoon in Mr. Fisher's office. Neal Crowley, attorney for American Home, and John Daley were also present, as well as the undersigned.

After describing the preliminary screening procedures (Casey was chosen by Cora Lee Bernstein; he was screened, in company with other potential contestants, at Steinway Hall; his partner was a waitress, Miss Shepard; he won \$13,000, the full amount), Casey stated that, prior to his appearances on the show, "Harvey" hummed or sang tunes to him which included tunes used on the programs. The humming took place at the Salter office at 488 Madison Avenue and at the studio in a room on the second floor. The humming sessions occurred prior to each program on which he appeared. Bacall and Casey were alone in these humming sessions. Bacall kept a check list of some sort.

Casey stated initially that 23 out of the 25 tunes in the marathon were hummed in advance. He later said that about three out of five tunes used in the program were hummed in advance. A total of perhaps 10 tunes were hummed in advance of each program. Not all of these were used on the program and sometimes Casey expected to hear tunes on the program that had been hummed to him but they were not used. He said that the tunes were easy and he knew them anyway, but he admitted that there were a few that he did not know or could remember the titles of and with respect to which Bacall gave him "hints." He mentioned one tune he had identified as "The Hula Dancer" which Bacall corrected "The Hootchie-Cootchie Dancer". Bacall told him the name of "Joshua Fit De Battle of Jericho" which was used on the program. Bacall also coaxed answers out of him by singing, for example, "Go down, Go down * * * who?" ("Go Down Moses".)

Casey seemed embarrassed at recounting his experiences in the humming sessions. He said he had testified before the grand jury on two occasions shortly before election day. He said that before testifying he had conferred with a lawyer for Salter who had told Casey that he should tell about the humming sessions if, in fact, there had been humming sessions.

RICHARD A. FORSLING.

Mr. GOODWIN. In your investigation of the show, "Name That Tune," would you say that interview of the contestant is illustrative of the practices which you referred to in your statement?

Mr. FISHER. No, it was not, Mr. Goodwin. We interviewed other contestants. The furnishing of names and the hints was absent in these other contestants. There was one other who, as I recall, said that Bacall, as he hummed with the checkboard, indicated whether he was right or wrong. But we found among the six or seven that we called in on this, no others confirming this. But they did confirm the screening procedures, the playing of many tunes therein, the humming or playing in the company, and then at the studio. We felt after reviewing the evidence we had and the nature of the program, that the program was to a great extent a race against a 30-second clock; that Salter had given us illustrations where he would give you the names and then he would start to hum them and against the clock, even though you knew the name a few minutes before, one would have difficulty beating the clock. So on this one we had them spell out in what we call our exhibit A, to our agreement, how they got the contestants, what they do with them, the playing of tunes,

the purpose of it being to help the contestants, that no names—and this is part of the warranty—no names or hints are given of the tunes that are played for identification prior to air time.

Mr. GOODWIN. Up to this time, as a matter of practice, the tunes that were to appear on the program were given to the contestants in advance and there was no statement of this made to the viewing public, is that correct?

Mr. FISHER. That is true. On the December 22, 1958 program they spelled out an explanation as to how they select the contestants and what happens to the contestants after they come in for the screening.

Mr. GOODWIN. Is such a statement made on every program?

Mr. FISHER. The long statement is not made. A short form statement is made near the beginning of each program. Management's view on that was, let the American people decide. They hear how it is done, if they want to watch it, okay. If they don't watch it, after they know how it is done, okay, too, the program will die.

Mr. GOODWIN. Has it died?

Mr. FISHER. No, sir; it has not.

Mr. GOODWIN. Could you furnish us with a copy of that short form statement?

(Statement referred to above follows:)

SHORT FORM STATEMENT ON "NAME THAT TUNE"

This is a game that everybody can play. We play tunes drawn from the types of music the contestants are most familiar with. Some of the tunes have previously been identified for us by our contestants. But you don't have to be an expert to win. All our tunes are songs you've heard and sung all your life.

Mr. FISHER. I would be pleased to furnish both the long warranties and the contract that we have from them with respect to this matter.

Mr. GOODWIN. Do you feel that the indulgence of humming tunes to contestants prior to their appearance on the program without any such statement which was the case before your investigation, was a fraudulent practice?

Mr. FISHER. It was a deceptive practice.

Mr. GOODWIN. Did you also have occasion to investigate a quiz program called "Love or Money"?

Mr. FISHER. I did.

Mr. GOODWIN. On this program, if I am not mistaken, there was a machine known as the dancing decimal, was there not?

Mr. FISHER. Yes, sir.

Mr. GOODWIN. I wonder if you could briefly tell us what the function of that machine was?

Mr. FISHER. If I may take a minute I will try to describe what they played. They have three contestants, each has a buzzer in his hand. The contestants are shown before the questions is asked to them, an article of merchandise. The question is given to them. The one who thinks he has the answer first pushes his buzzer. The buzzer is tied in to the dancing decimal machine. It is visible to the viewers at home. It is not visible to these three contestants. The value of the merchandise is put into the dancing decimal board. After the question is given by the MC and prior to the buzzer being pushed, the decimal is dancing back and forth. So the contestant thinks he has the right answer and he pushes the buzzer. That stops the machine. Then he has an election to take the merchandise or what is up on the

machine. With that decimal dancing, assume that the value is \$50 of the merchandise. It will go from five cents to \$5 to \$50 to \$500, 10 times. The jackpot is 10 times the original value. If it were \$500, it would go from the same at the lower end up to 5000. That is the choice. We at home see where that thing has stopped. The contestant does not. What we found was——

MR. GOODWIN. I want to clarify one thing. The position of the decimal at the time the buzzer is pressed determines the amount of money that will be won by the contestant if he selects the cash rather than the merchandise?

MR. FISHER. That is true.

MR. GOODWIN. And it was represented that it was a matter of random selection or chance in which the position the decimal would be, is that correct?

MR. FISHER. Yes, sir.

MR. GOODWIN. Did you find in your investigations that the producers of this show had rigged the machine electrically so that they might keep the amount of money won within their budgetary limitations.

MR. FISHER. That may have been the purpose. What they did from time to time, not always, they would control the console machine which was at the rear of stage in such a manner that by throwing a switch if at the instant the buzzer stopped the decimal was on the thousand position—and only then, this is later in the history of it—the throwing of the lever simultaneously with the buzzer being pushed, when the buzzer was pushed it made a noise, that decimal would jump or the value would jump from \$8,500 to \$85. But if the decimal was stopped at any of the other positions then this was not rigged. It prevented the 10 times, the jackpot occurring.

MR. GOODWIN. In other words, the purpose of rigging the machine was to keep people from earning money in the thousands?

MR. FISHER. From time to time, that is true.

MR. GOODWIN. Was it because of this rigging that you threw the program off the air?

MR. FISHER. That is true.

MR. GOODWIN. Were technical help who operated these machines employees of the producers or CBS?

MR. FISHER. The stage hands were employees of CBS and the technician who took the orders regarding this matter from the producing staff and transmitted them to the stage hand who operated the console was a CBS employee.

MR. GOODWIN. Did you in the course of your investigation conduct an investigation of the "\$64,000 Question" and the "64,000 Challenge?"

MR. FISHER. Yes, sir.

MR. GOODWIN. Can you tell us what the results of those investigations were?

MR. FISHER. When producers were interviewed by CBS after "Dotto" was removed from the air, we talked—I didn't myself, my assistant did because I was away at the time, Mr. Fleishmann—and he described a certain degree of control as being exercised. He told about the original screening of contestants to obtain an idea as to their personality and their knowledge. He indicated that from time to time

there would be deeper probing of certain tests. He gave as an illustration probing and finding that a contestant was strong in a more limited area or of a wider field. They said that they never gave the questions that were asked in the screening on the program. They said that at times those who had been so interviewed failed, those who had not would win.

When we got the call from the Reverend Stoney Jackson pertaining to the "Challenge," and I called him that Saturday morning—everything seemed to happen week-ends—I asked him what had occurred and he said in the warm-up on the "Challenge" he had been asked, did he know "Idyls of a King," did he know "Jane Eyre", did he know a body of water across which a lover swam to his sweetheart. I am paraphrasing him. Then he was asked what 19th century poet wrote about that body of water. He didn't know. He said that this person who had given him the warm-up gave him the name, Thomas Hood. During the course of that conversation I asked him——

Mr. GOODWIN. Excuse me, did he testify that those same questions later appeared on the program? Did he tell you at this time? Those same questions he had been asked on the warm-up session appeared on the "\$64,000 Challenge" when he appeared?

Mr. FISHER. Yes. The name Thomas Hood was asked for. So during the course of our conversation with him, since he had been on the "Question," I asked him what about the "Question."

Mr. GOODWIN. That is the "\$64,000 Question?"

Mr. FISHER. That is right. He said there was never anything like that on the "Question." They screened you to find out your subject and that was it. So after I talked to him and we had gotten together with the producer and the person who had given the warm-up in this matter to which Jackson had referred, she stoutly denied it and said that it had not occurred. I had not met the Reverend Stoney Jackson. I had talked to him twice during the course of that day. I had the conflict that was very emphatic from the warm-up person who was there.

So as I said earlier, we let it go on. I had to conclude that we did not have substantial evidence at that moment. The show was going on the next day. So I advised the management and it went on. Then the next week we began talking to contestants and then it was, when I was trying to run down an episode I learned of, that Saturday afternoon for the first time, which also had occurred on the Challenge, and—there were two people involved, and what was handed to me was a letter one of them had written which referred to a second incident—so when I called the writer of the letter, his attorney called me back to say that he didn't want him to come in to see me. Then I called the other person involved in the episode and he said he had been down to the district attorney's office.

I said, "Well, I would like to talk to you. Call up Mr. Stone down there and tell him I want to talk to you." He did and Mr. Stone called me and that is what I referred to in my statement.

Mr. GOODWIN. Then you uncovered no other specific instances in your investigation whereby contestants on the "Question" or "Challenge" shows had been asked in warmup sessions to give the same specific information which they were later asked for in this program.

Mr. FISHER. There was one other. That occurred just before we were called off, which we had gotten from a contestant that we called

in. That involved a discussion between the warmer-upper on the "Challenge" and this contestant. In the give and take of the conversation one of the subjects suggested by the contestant was then, according to that contestant, converted into a question on the "Challenge."

Mr. GOODWIN. Was that also denied by the producers?

Mr. FISHER. At that point with Mr. Stone asking me not to go ahead on the "Challenge" I didn't go back to them. I was reaching the point where I was not sure it would do any good if I went back, so by the middle of that week we had the Stoney Jackson episode, this other one I referred to, and this last one. I had really talked to the one contestant in person.

Mr. GOODWIN. Then you have nothing that you can refer to as a direct knowledge of proof that either of those shows were fixed?

Mr. FISHER. As a lawyer I cannot say I have evidence; no, sir.

Mr. GOODWIN. Did you investigate any other of your quiz shows?

Mr. FISHER. Yes, sir; we have.

Mr. GOODWIN. Have you found any evidence in connection with any of them that they have been rigged? Other than those named in the statement, that is.

Mr. FISHER. No, sir.

Mr. GOODWIN. Mr. Fisher, many witnesses before this committee, both in public and executive session, have testified that the practice of rigging quiz shows was extremely widespread in the television industry, and evidence that we have heard tends to confirm that impression. In light of this, perhaps you could explain how the television networks which dominate the industry to some extent, were not aware that these practices were going on.

Mr. FISHER. Mr. Goodwin, maybe you make an assumption there in the question. If it was so widespread then why in the world did they deny it so when we moved in that Friday night? That is one thing I never got through my head. Because later on when the producer of that program spoke to us, 1 week later, and indicated that, I began to wonder about these assertions I heard that everyone knew about it. Because when I got the information from our program department that they had just been called by Ted Bates, I was naive enough, if you wish to put it that way, to be shocked. Then when we went over and started asking questions, there was just a flat denial. If it had been so well known there would have been no purpose in misleading us. They should have said you know all about that. They didn't. I am not so sure, Mr. Goodwin, that at that time it was. Hindsight is a wonderful thing, believe me. I know now with what I have learned and heard here we could have done a much better job back at that time. I just question one of the premises of your question, that it was so well known. When the lawyers marched in then it certainly was not.

Mr. GOODWIN. The premise was not so much that it was not well known, but now with the evidence that it was very widespread, it is hard to understand why it was not known by the people in the industry since it seemed to have been such a common practice.

Mr. FISHER. I don't know the answer.

Mr. GOODWIN. No further questions.

Mr. MACK. I would like to ask how the producers—and I think the producers have testified that this rigging was necessary to develop an appeal to large audiences. I think that statement is true according to the testimony we have received. Several witnesses have testified to that fact effect. My question is—you say you have been rather naïve—if CBS didn't know that this rigging was necessary to develop the public appeal, how can you as professionals in the field operate such a successful network?

Mr. FISHER. I am not creative; I am just a lawyer.

Mr. GOODWIN. I understand that. I meant this in regard to the entire staff of CBS and not just limit it to the legal staff.

Mr. FISHER. With the qualification that I don't know anything about program production, I must suggest that I don't go along with that line. There are various types of control and control is developing into a naughty word. I will tell you one type that I would assume would be perfectly OK to all of us.

Mr. GOODWIN. You would favor control to a certain extent; is that correct?

Mr. FISHER. Then we have to start defining what type; otherwise it gets loose. I would certainly assume that on a program it would be proper to select contestants who are sober rather than drunk, who are what they call, their personality projects, rather than dull. I can't see anything wrong with that.

Mr. MACK. If you permit me to interrupt you there, you would probably go along with the idea of brushing them up a little so as to make them a little more attractive at the time.

Mr. FISHER. You mean in physical appearance?

Mr. MACK. Yes.

Mr. FISHER. Or mental?

Mr. MACK. I was referring first to the physical appearance.

Mr. FISHER. I see no objection to that because to that extent I would assume it is legitimate showmanship just as when I would suppose you gentlemen may appear on television they probably tell you to wear the blue shirt and maybe make up your face. I can't see we are really misleading.

Mr. MACK. They might even tell us what questions they will ask us.

Mr. FISHER. Now you go into something completely different. If I may just go ahead. I would assume that if a man comes in and says "I am an expert in wars of all kinds, ancient, modern, and so forth," that it would be profitable and necessary for the producer to find out whether he was just saying that in order to get on the air, as some people would, I am sure, to see if he is what he represents himself to be. When the producer is determining that he necessarily is finding out some things that are in that man's head. Right? Then the producer, if he is honest, can put him on, it seems to me, and not reach that degree of feeding or rigging that is objectionable. But if he uses the same question, knowing the fellow knows the answer, out. If it is in the field of wars and he is satisfied he does know war, I would not suppose that to be improper, to find out that he is what he represents himself to be, an expert in a given field.

Mr. MACK. Do you think the executives of CBS were aware of the fact that a wee bit of dishonesty would make them more money?

Mr. FISHER. No, sir. I do not.

Mr. MACK. That is exactly my point. What I cannot understand is that almost all of the producers——

Mr. FISHER. May I interrupt, sir, on that. I beg your pardon.

Mr. MACK. Certainly.

Mr. FISHER. It has seemed to me that it was terribly stupid of these people to do this.

Mr. MACK. Which people? You mean CBS or the producers?

Mr. FISHER. Producers who have rigged their shows that have been thrown over because they have killed something that was terribly valuable to them.

Mr. MACK. They developed a tremendous field as they were in the process of killing it, too; is that not correct?

Mrs. FISHER. Developed a tremendous what, I am sorry, sir.

Mr. MACK. They developed a tremendous field of quiz shows while they were in the process of killing themselves; is that correct? They developed many highly successful shows.

Mr. FISHER. The ones that have been testified to here today, yes. Many of them were highly successful. But that doesn't argue that they can't be successful unless they are rigged.

Mr. MACK. No, I was just relying on the testimony. I was not particularly agreeing that it is necessary to be dishonest to be successful. I was relying on the testimony we received from some of the contestants, and I think all of the producers, that they felt it was necessary to rig these shows in order to get a higher rating, and thereby making them more valuable.

If the producers could see this, it would have that end result, it would seem to me the professionals in the field of entertainment would also be able to see that.

Mr. FISHER. I don't think we do, sir.

Mr. MACK. My question was, Was CBS aware of the fact that by being somewhat dishonest they could develop more appeal for the particular program?

Mr. FISHER. CBS was not aware of it because to the extent I know CBS does not believe in that. These things are killed now. The short run, yes, they may make a buck, but in the long run they are dead.

Mr. MACK. Did CBS understand that in the short run they could make a buck by a wee bit of dishonesty?

Mr. FISHER. CBS didn't because I have not found CBS knew about this.

Mr. MACK. CBS is not aware of that?

Mr. FISHER. That is right, sir.

Mr. SPRINGER. Mr. Fisher, during the last several years, how many quiz shows, roughly, did CBS handle?

Mr. FISHER. I am sorry, but I just don't know. I think last summer when this broke, there were at that time in the neighborhood of 10 programs on. But I do not know, sir, how many others they have had.

Mr. SPRINGER. Did CBS ever at any time on those productions——

Mr. FISHER. Subject to correction, I know only of 10. I speak of those. Subject to correction there, I do not believe CBS owned them. CBS on occasion would buy one.

Mr. SPRINGER. In short, to refresh your recollection as their attorney, they never owned any TV quiz show outright; is that correct?

Mr. FISHER. I think that is correct, sir.

Mr. SPRINGER. All of CBS's programs were produced by independent producers or productions?

Mr. FISHER. I believe so.

Mr. SPRINGER. All of these quiz shows shown on CBS were produced on properties other than that of CBS?

Mr. FISHER. Technically, no, because many of them would be physically produced in our studios, our below-the-line element.

Mr. SPRINGER. By any of your employees?

Mr. FISHER. Yes.

Mr. SPRINGER. Did you supervise those productions?

Mr. FISHER. No, sir. No, what we call the above-the-line elements.

Mr. SPRINGER. What do you mean by the above-the-line elements?

Mr. FISHER. That is the script or the intellectual property, the talent, the director, the producer. Below the line is the physical elements, the props, the cameras, the technicians.

I should suspect that most of the quiz programs on our air had their below-the-line elements purchased from CBS. In other words, we furnished the technicians.

Mr. SPRINGER. Were all of the brains in the productions owned by CBS or by an independent producing firm? That is, your above the line.

Mr. FISHER. That would be above the line.

Mr. SPRINGER. They were owned by whom and paid by whom?

Mr. FISHER. The independent producing company.

Mr. SPRINGER. Did any of your personnel ever supervise any of those above-the-line personnel or any TV quiz program on your network?

Mr. FISHER. By supervise——

Mr. SPRINGER. By supervise I mean that they were in a position to tell the above-the-line personnel what to do?

Mr. FISHER. In the construction of the program?

Mr. SPRINGER. Yes, sir.

Mr. FISHER. No, I don't think that it would be fair to say we supervised to that extent. We certainly, as a broadcaster, have the responsibility as to what goes out over our air. To that extent, there is supervision. There is supervision when commercial copy is sent in. It comes to our editing department. There will be objectionable claims made and so forth. Out they go.

To that extent we are supervising.

Mr. SPRINGER. How many quiz programs has CBS investigated and put off the air?

Mr. FISHER. In varying degrees, because several went off the air shortly after due to a natural death. That was after "Dotto." Therefore, the degree of investigation varied.

If I am right, there were 10 on after "Dotto," then it would be 10 plus 1 new one that has come on, which would be eleven.

Mr. SPRINGER. That have been put off the air?

Mr. FISHER. That have been investigated. The number that have been removed is one, two, three, so far as objectionable practices on

"Name That Tune," and four so far as the preemption of the last scheduled program of "\$64,000 Challenge."

Mr. SPRINGER. How many quiz programs does CBS have on the air today?

Mr. FISHER. Three, in the "Art Linkletter House Party" there is a contest that we have our exhibit A for, that I referred to. I don't really refer to that as a quiz program, but there is a contest.

Mr. SPRINGER. Are any of those four produced by CBS?

Mr. FISHER. No, sir.

Mr. SPRINGER. What steps have you taken to insure that rigged programs will not happen again?

Mr. FISHER. I will be glad to explain what steps we have taken. I don't mean to quibble at all, not to insure that they will never occur again because I meant very much what I said at the tail end of my statement: We cannot guarantee to you that in the future—

Mr. SPRINGER. I will withdraw the question and use your words. What kind of vigilance have you exercised?

Mr. FISHER. Thank you, sir. The one that I think is quite helpful is this surveillance conducted by the editing department. They are the ones who in their normal course of business are receiving commercial copy that comes in from the agencies. They go over that. They go over scripts to see if we are violating any legal rights or matters of morals or taste.

That group that has been working on surveillance since it has been set up has uncovered looseness in security that we have been able to move in and tighten up on a quiz program, where there was not a rigging but the thing was just being handled a little loosely by the producer. And the fact that certain representatives of the editing department drop in on the program is the same idea as the policemen on the beat. By now these producers know when X comes in that he comes for a certain purpose. That is helpful. That will not prevent a producer from jumping in a car and driving out to a man's home.

That is why I said we cannot guarantee that will never happen.

I feel from the word that comes in from that group, from the discussions we have had, that has been of benefit. It was due to the work of that group that we uncovered the decimal answer machine situation. Through the legal procedure of drafting up a special amendment to the contract, spelling out warranties of fairness and no misleading, and then attaching thereto exhibits A, B, C, D, and E, that spell out the various elements of the program and how they select contestants and so forth, the policemen on the beat idea—people breach contracts, I know—I think that has a salutary effect.

Legally we didn't need that. When it was suggested we do that, I said we have that under our facilities contract now. We have regulations in the long form which says there will be no misleading implications to the public and nothing will be brought in that will be injurious to the interests of the American public or CBS or its affiliates or its stations or its sponsors.

So under the first situation that developed, without the benefit of the new exhibit A, I was OK. But I must admit that having this long thing and their having to take the time to write it all out, that helps some. Then the fact that we have a private investigator is known to these producers, because word somehow trickles back to them that so

and so from CBS has been asking about the programs. That has helped or will help more.

That is again the policemen on the beat idea. When something questionable occurs that needs explanation, we call them in.

By now I am sure they know we mean business on this thing. Complaints are registered at times about a program, fairness, how a contestant was treated, that we try to follow up with the producer.

So these are little ways that help to relieve the situation. They won't guarantee 100 percent. But we hope they will improve.

Mr. SPRINGER. Mr. Fisher, does CBS at this time employ any producer who was involved in a fixed program in the past?

Mr. FISHER. Employ?

Mr. SPRINGER. Read the question.

(The pending question was read by the reporter.)

Mr. FISHER. I don't know, sir. I have not checked that.

Mr. SPRINGER. Do you not think that is another line of vigilance that certainly ought to be exercised?

Mr. FISHER. I think it is a good suggestion.

Mr. SPRINGER. We have had one instance of a man who testified here today who previously was engaged in this fixing business but nevertheless continued to be employed as a producer as late as last Friday.

I only say that, Mr. Fisher, for this one reason: One of the things we hope will come about as a result of this investigation is that it will be recognized that responsibility is not necessarily only on the producer. The public which receives these broadcasts in their homes does not know anything about the producer and is not interested in the producer.

Mr. FISHER. That is true.

Mr. SPRINGER. CBS's honesty and integrity is on the line.

Mr. FISHER. That is right.

Mr. SPRINGER. It is their job to make the investigation.

Mr. FISHER. That is right.

Mr. SPRINGER. It seems to me if you are going to keep employing the same people who have been engaged in these practices in the last few years, you have not shown the vigilance you should for the American people under the license granted to you by the Federal Communications Commission.

Mr. FISHER. I should say that the stagehands involved in this one episode were not fired.

Mr. SPRINGER. I am talking about the people in the production end who had a chance and did engage in these practices, whether he is the producer, associate producer, or just a clerk working in the office.

Mr. FISHER. Thank you for your suggestion.

Mr. MACK (presiding). Mr. Rogers.

Mr. ROGERS. Mr. Fisher, you said you were, of course, a lawyer and not a producer or creative artist in this business. You are speaking for all of the officials and the employees of CBS who are in the managerial or supervisory position when you say that you had no information concerning these malpractices or no reports from anyone about it, no knowledge of it, until the time you related when you began the investigation that culminated with some action being taken.

Mr. FISHER. I believe I am, Mr. Rogers.

I must tell you I have not talked to every man in CBS, but certainly to the extent I have, and it has been fairly widespread, yes.

Mr. ROGERS. You have made an effort to get to the people that could have done something about it at an earlier date had they known about it?

Mr. FISHER. Yes, sir.

Mr. ROGERS. You feel that they were fairly innocent as far as knowledge is concerned, or information that could have led to an investigation which finally was had after you got the information?

Mr. FISHER. Yes, sir.

Mr. ROGERS. One other thing.

There seems to be a difference of opinion insofar as moral standards are concerned with relation to some of these practices. I gather from your written statement, Mr. Fisher, that you and the responsible people with CBS do feel that this was a fraudulent practice used on the American public, the television viewers?

Mr. FISHER. It certainly was a deceptive practice, sir.

Mr. ROGERS. That is actually what I had in mind.

Whether or not it was a fraud subject to criminal prosecution or civil liability would be another question. But it was dishonest and deceitful.

Mr. FISHER. Yes, sir.

Mr. ROGERS. Thank you very much.

The CHAIRMAN. Are there any further questions?

Mr. Fisher, let me, on behalf of the committee, thank you for your appearance here today.

Mr. FISHER. Thank you, Mr. Chairman.

The CHAIRMAN. I assume that concludes any statement you care to make further?

Mr. FISHER. Yes, sir.

The CHAIRMAN. Thank you very much for your appearance.

Mr. FISHER. Thank you.

The CHAIRMAN. Mr. Enright.

Do you solemnly swear the testimony you will give this committee to be the truth, the whole truth, and nothing but the truth, so help you God?

TESTIMONY OF DANIEL ENRIGHT, ACCOMPANIED BY CHARLES MURPHY, ATTORNEY

Mr. ENRIGHT. I do.

The CHAIRMAN. Do you object to these gentlemen taking your picture?

Mr. ENRIGHT. Not at all.

The CHAIRMAN. Will you state your name to the committee?

Mr. ENRIGHT. Daniel Enright.

The CHAIRMAN. Will you give your residence address?

Mr. ENRIGHT. 19 Colvin Court, Scarsdale, N.Y.

The CHAIRMAN. State your business or profession?

Mr. ENRIGHT. I was employed as a television producer.

The CHAIRMAN. In connection with your business, did you have to do with the production of the quiz show commonly referred to as "Tic-Tac-Dough"?

Mr. ENRIGHT. I did, sir.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Enright, who owned "Tic-Tac-Dough"?

Mr. ENRIGHT. Prior to March 1957, it was owned by Jack Barry—I am sorry, may I withdraw that?

Mr. LISHMAN. Yes.

Mr. ENRIGHT. It was owned, as I recall, by Jad Productions.

Mr. LISHMAN. Who are the principals in that?

Mr. ENRIGHT. Jack Barry and I.

Mr. LISHMAN. There was a daytime show of "Tic-Tac-Dough." How long did that go on?

Mr. ENRIGHT. Its inception was the end of July 1956.

Mr. LISHMAN. Before proceeding further, I should say, for the record, that Mr. Enright has already testified in executive session concerning the show "Twenty-one" so that our questions in the open session will relate exclusively to "Tic-Tac-Dough."

The CHAIRMAN. Mr. Lishman, I overlooked the record to show the identification of the witness, that Mr. Charles Murphy is appearing with Mr. Enright as counsel to advise him of his constitutional rights as provided by the House rules.

Mr. LISHMAN. Mr. Enright, you are also producer of the "Tic-Tac-Dough" show in the evening?

Mr. ENRIGHT. I was not the producer. I was the supervising producer.

Mr. LISHMAN. What period did the show run on the evening?

Mr. ENRIGHT. As I recall, it commenced in September 1957, and ran through December 1958.

Mr. LISHMAN. Did you employ Mr. Howard Felsher as producer for the daytime "Tic-Tac-Dough" show?

Mr. ENRIGHT. It was I who first employed him.

Mr. LISHMAN. Had he previously worked for Barry & Enright in connection with its "Juvenile Jury" in 1954 and 1955?

Mr. ENRIGHT. I can't recall the years, but he did work for "Juvenile Jury."

Mr. LISHMAN. Mr. Felsher has testified that after the fall of 1958—or up to the fall of 1958—more than 75 percent performances in the evening of "Tic-Tac-Dough" were fixed in that questions and answers were supplied in advance to one or more of the contestants. Is that correct?

Mr. ENRIGHT. I can't at the moment give you the figure 75 percent. I can't yield to that figure. I will have to go along simply because I have no figure available.

Mr. LISHMAN. Does that sound correct to you?

Mr. ENRIGHT. I am not quibbling, Mr. Lishman; I just cannot arrive at a reasonable figure.

Mr. LISHMAN. Would you say that a substantial part of those shows were fixed?

Mr. ENRIGHT. I would say so.

Mr. LISHMAN. Is it a fact, Mr. Enright, that Mr. Felsher would report to you that a certain contestant was a good contestant and then receive your approval that he should be given the questions and answers in advance of his appearance on the program?

Mr. ENRIGHT. That is true.

Mr. LISHMAN. Was that a consistent practice?

Mr. ENRIGHT. Consistent in what sense? That he came to me for my approval?

Mr. LISHMAN. Yes.

Mr. ENRIGHT. It was.

Mr. LISHMAN. Did you give such approval?

Mr. ENRIGHT. I did.

Mr. LISHMAN. Who originated the idea of fixing the shows in this way?

Mr. ENRIGHT. You mean the shows in general in this industry?

Mr. LISHMAN. In furnishing questions and answers in advance to contestants.

Mr. ENRIGHT. I should think that this practice has been in force for many, many years. I can't think of any source to which it can be attributed.

Mr. LISHMAN. Where did you first hear it being used?

Mr. ENRIGHT. I can't recall where I heard it used.

Mr. LISHMAN. When?

Mr. ENRIGHT. When I can't. I have been engaged in radio since 1939, and I do not recall at what moment someone indicated to me that shows of this type might be fixed.

Mr. LISHMAN. When Mr. Felsher would bring a contestant to you or mention a contestant to you, to get your approval about giving him the questions and answers in advance, would you sometimes ask Mr. Felsher if he believed that this was a man who could be trusted in the he would not go and talk about it?

Mr. ENRIGHT. I don't recall doing it specifically but it would be a reasonable thing I might ask him.

Mr. LISHMAN. Mr. Felsher has so testified.

Mr. ENRIGHT. Mr. Felsher does not lie and therefore I go along with him.

Mr. LISHMAN. Who told Mr. Felsher to take care that this thing would be kept quiet?

Mr. ENRIGHT. I don't know who told him. I assume that Mr. Felsher must infer what he was doing should be kept quiet.

Mr. LISHMAN. You were his employer?

Mr. ENRIGHT. That is right.

Mr. LISHMAN. Did you not tell him that he had to take measures to see that he did not have contestants who would be "untrustworthy" in that situation?

Mr. ENRIGHT. I might have. I am not arguing the point. I am sure it was understood that whatever was practiced had to be kept quiet.

Mr. LISHMAN. Did you give close supervision over Mr. Felsher's activities as producer of these "Tic-Tac-Dough" shows?

Mr. ENRIGHT. Close supervision in that policy would be discussed thoroughly with him. His job is to execute policy.

Mr. LISHMAN. Did you sit down with Mr. Felsher and plan shows in advance as to their outcome?

Mr. ENRIGHT. Sometimes, yes.

Mr. LISHMAN. Did you sometimes sit down with Mr. Felsher and Mr. Green and discuss the fact that you were running over your budget and that some measures of control would have to be employed to bring the budget in line?

Mr. ENRIGHT. That meeting you speak of has been in dispute as to what actually happened. I can only give you the best of my recollection.

The subject of the meeting was budget. As I recall, Mr. Green suggested that he bring someone in and feed him questions and answers. I vetoed it and suggested instead that we slow the game down by having the Master of Ceremonies read his questions a little more slowly.

Mr. LISHMAN. At that time, why did you not want to have the questions and answers furnished in advance as had been done often before?

Mr. ENRIGHT. I really can't remember the reason. I can't remember the reason.

Mr. LISHMAN. You tried that slowdown and it didn't help to bring the budget in line?

Mr. ENRIGHT. No. The slowdown was frequently used or on occasion, and it always helped to bring the budget down.

Mr. LISHMAN. Did you ever tell Mr. Felsher that over the 13-week cycle he must take every care not to exceed the \$6,500 weekly amount for prizes?

Mr. ENRIGHT. I don't recall. I might have.

Mr. LISHMAN. There is testimony to that effect by Mr. Felsher.

Mr. ENRIGHT. Then I will agree with Mr. Felsher that I did.

Mr. LISHMAN. When the grand jury commenced its investigation of the TV quiz program, did you use any efforts to keep evidence from being presented to the grand jury?

Mr. ENRIGHT. I think—just so I don't make any erroneous statement—I think if we can just sectionalize it. As far as the district attorney's office is concerned, to the best of my knowledge we gave him everything he requested. As far as contestants are concerned, I don't recall. I don't recall.

Mr. LISHMAN. Don't you recall that Mr. Felsher reported to you that he had been contacting contestants who had been summoned before the grand jury?

Mr. ENRIGHT. Yes, he did tell me that.

Mr. LISHMAN. Didn't you ask him to continue to do that?

Mr. ENRIGHT. I don't recall asking him to continue to do that, no.

Mr. LISHMAN. What was the substance of the reports that Mr. Felsher made to you concerning his contacts with such contestants. What did he report to you about that?

Mr. ENRIGHT. He reported to me that he had contacted contestants. He had contacted contestants.

Mr. LISHMAN. Did he report to you that on some occasions he believed he was successful in having the contestant agree not to tell the truth before the grand jury?

Mr. ENRIGHT. As I recall, he did report that in many instances contestants were as eager as he to keep the information secret.

Mr. LISHMAN. On some occasions he reported that some witnesses had told him that they were going to tell the truth.

Mr. ENRIGHT. That's right, yes. May I ask this, Mr. Lishman? Mr. Felsher was the one who spoke to the witness. Nevertheless, by my silence when he told me what he was going to do, I might have condoned that practice. May I finish, sir?

What was condoned, obviously, is not condonable, but all I ask you to do is to try to understand that terror and panic had besieged us in those days.

Mr. LISHMAN. Mr. Enright, from the testimony received so far by the subcommittee, it would appear that as one of the men most responsible for the TV quiz fixes, that you may be able to suggest to the committee some practical remedial measures which might be taken to prevent this thing from happening again. Would you be able to make any suggestion in that direction?

Mr. ENRIGHT. I made a suggestion some 6 or 8 months ago which I think is the most effective way of handling these things. While it might be somewhat ironic that this suggestion comes from me; nevertheless, here it is:

I think the best regulation that can be obtained is through industrial control rather than through legislation as has been evidenced in other industries. I think if a commission can be established either by the industry itself or by each individual network, which is solely responsible for the propounding of questions and that the producer of the show has nothing to do with the preparation of the questions, merely gives the unit the specifications and the type of questions he needs, they propound the question. He never gets to see the question until it hits the air.

All the security measures are conducted by this unit. So as to minimize contact between the researchers and contestants. As Mr. Fisher testified here before, as long as you have questions being prepared in the same office which produces a program, the likelihood is greater than ever.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Mr. Mack?

Mr. MACK. I merely wanted to ask Mr. Enright—you mentioned that this practice of rigging shows has been in existence for quite some time, if I understood you correctly.

Mr. ENRIGHT. Yes.

Mr. MACK. Would you care to be a little more specific on what you mean by quite some time?

Mr. ENRIGHT. May I qualify, sir, by saying that "rigging" might be too strong a word. Perhaps "control."

Mr. MACK. I will accept your word.

Mr. ENRIGHT. When you come to control, you are back to semantics. What constitutes control? If it is wrong—

Mr. MACK. First, we want to have an understanding on control, too. My understanding of control would be rigging the program.

Mr. ENRIGHT. I think it is fair to say that any process by which a contestant is given an advantage over another contestant known by the staff which produces the show, is rigging. Rigging can go to the extent we did in furnishing actual questions and answers. But suppose you are a contestant, Mr. Mack, and you came into my office and, say, your specialty was the law, and I sat down and started to question you about the law, and made certain notations on the side as to what questions you can answer and what questions you can't answer, and then you go on the air and if I want you to continue, I will ask only the questions I know you will answer.

If I want you to lose, I will ask you the questions which you can't answer. Is that any less unfair than actually sitting down and giving you questions and answers? It amounts to the same thing.

I know in advance about what you know, whether it is by your knowledge or by furnishing it.

MR. MACK. Let us clarify that point. You would speak of that as control.

MR. ENRIGHT. Absolutely it is control. Any possibility which one contestant, by the aid of the production staff, is able to give one contestant an advantage over another contestant, that process is rigging.

When it started, I don't know. I do know that when I became actively involved in programs, radio programs, it was talked around that certain panel shows were under control.

MR. MACK. Do you mean these supposedly unrehearsed panel shows?

MR. ENRIGHT. Yes. Let me take an incident and I hope you won't infer any implication. There is a news show in which a scientist is being interviewed about his projects. The questions are announced as being spontaneous and unrehearsed. Yet, before the show, this scientist is interviewed by the reporters as to what areas they are going to touch upon.

The scientist knows pretty well what areas he is going to be asked about. Isn't that some form of control? I am sorry to ask the question.

MR. MACK. I am glad you mention that because, while it is different, you have no contest and you are not deceiving the people generally by having these people compete for monetary remuneration.

Still, there is probably a little deceit there as well as there is in some of the other types of entertainment.

MR. ENRIGHT. I don't think it is deception. I am not applying that to what we did. I do not think deception is necessarily harmful or bad. Deception is practiced in everyday life.

MR. MACK. Of course, you have told them this is a completely unrehearsed show.

MR. ENRIGHT. The magician who comes up or the mindreader who says, "I can read your mind." He is inflicting deception. I think it must be measured by the hurt he inflicts on people.

MR. MACK. I think you thoroughly agree, or you have stated that you felt, that a degree of deception was of considerable value in producing shows.

MR. ENRIGHT. Yes, sir; I do.

MR. MACK. The hour is rather late and I do not want to pursue this, but I do want to thank you for your comments on this particular subject supplied by this question.

MR. ENRIGHT. Thank you, sir.

MR. MACK. I wanted to ask this one question: Do you think that it would be possible for all of the representatives of CBS and NBC to be so naive as not to be aware of this operation or at least not be aware of the value of this operation?

MR. ENRIGHT. I don't know. I don't know. A man testified here today by the name of Mr. Richard Pinkham, a man whom I respect thoroughly. He said that he was shocked and naive and living in a dream world. I believe Mr. Pinkham. Yet, I am shocked at the naivete of Mr. Pinkham. I think—and with this I am sure I cannot

be restored to the television industry after what has happened this past year—what I am going to say, I will seal any possibility in the future of returning to television.

I think that just as each of you who have ever watched a quiz show have wondered himself, I wonder if these people are fixed or not. Did you not, Mr. Mack, when you watched quiz shows, the thought occurred to you that it might be fixed?

MR. MACK. I did not intend to subject myself to cross-examination, but I will volunteer that.

MR. ENRIGHT. I am sorry.

MR. MACK. I would not speak as a representative or representing all the members of this committee. I would say that I have somewhat of a suspicious nature. For that reason, I probably do not conform with the majority opinion in regard to many shows.

I, individually, have been suspicious of some of these particular shows and of some of the other activities which have been televised.

MR. ENRIGHT. Is it reasonable, and may I ask you another question, sir, reasonable to assume that certain members of the television industry who are engaged in networks might have, at one time or another, until this investigation broke, have become suspicious? Might the thought have occurred to them: Are these shows fixed or not?

MR. MACK. I appreciate that. I think I should let the other members of the committee ask questions.

THE CHAIRMAN. Either that or trade places with Mr. Enright.

MR. MACK. I am not evading the cross-examination. I think my questions were of such nature that I was raising that question originally. Thank you.

THE CHAIRMAN. Mr. Springer.

MR. SPRINGER. Mr. Chairman, in the executive session Mr. Enright answered all the questions that I care to ask of him.

THE CHAIRMAN. Mr. Rogers.

MR. ROGERS. No questions. Thank you, Mr. Chairman.

THE CHAIRMAN. Mr. Flynt.

MR. FLYNT. No questions.

THE CHAIRMAN. Mr. Moss.

MR. MOSS. Yes, I have a few questions, Mr. Chairman. I would like, Mr. Enright, to develop the line of questioning of Mr. Mack just a little further. You had 20 years in radio and television?

MR. ENRIGHT. That is right, sir.

MR. MOSS. And familiarity with other quiz-type shows?

MR. ENRIGHT. Panel, dramatic, and quiz-type shows.

MR. MOSS. Other than those presently under discussion?

MR. ENRIGHT. Yes, sir.

MR. MOSS. Did you ever know a time in the industry where you felt or where you had a reason to believe that the programs were not controlled? The quiz-type programs.

MR. ENRIGHT. May I correct the impression I have created. Not all quiz shows, not all panel shows, are controlled.

MR. MOSS. To what degree were the quiz type not controlled?

MR. ENRIGHT. Just as "Tic-Tac-Dough" for the last year and a half has not been controlled, I am certain there have been other quiz shows on the air previous to that which have not been controlled.

MR. MOSS. Could you mention a few of them?

Mr. ENRIGHT. No, I cannot. I can only tell you by inference. I can't tell you "No" because they didn't exist. I would be rather foolish that I would mention one and then turned out it was not.

Mr. Moss. We have had witnesses who have indicated from a rather rich background that they knew of no instances. That it was almost a must, as they put it, to control a show where you were giving substantial prizes—quiz type. Would you agree with that?

Mr. ENRIGHT. I cannot agree categorically and state that all shows, all quiz shows that generally went on the air, were controlled; no, I can't.

Mr. Moss. I said where substantial prizes were involved.

Mr. ENRIGHT. I would say some form of control or other; yes. Some form of control or other. Not necessarily giving questions or answers.

Mr. Moss. But to explore areas of knowledge and frame questions in order to permit the favorite contestant to stay on the show for a longer period?

Mr. ENRIGHT. May I answer it this way: I think of the type of show you are talking about I should say at some time or other in the history of that particular show such control was exercised at one point or another.

Mr. Moss. Now on this matter of whether or not the networks and the agencies, the agencies work very closely with the producers, don't they?

Mr. ENRIGHT. Not necessarily, no. Not in the production of the show. They may work with them on the policy of the show.

Mr. Moss. Don't they have supervisory personnel representing them?

Mr. ENRIGHT. Yes, but the supervisory personnel, at least on our shows, and I can only talk from our standpoint, found that we could execute our job, and I am not referring to controls, execute our production chores better by being left alone. Usually they would sit on the side and leave us alone.

Mr. Moss. I have been very much intrigued by the means of communication, for instance, used between you and your staff. How did Mr. Felsher, for example, know that controls were in effect on "Tic-Tac-Dough"?

Mr. ENRIGHT. I don't recall. We discussed this. Mr. Felsher and I have discussed this quite often in the last year as to who told who. We can't recall. It is not that I am trying to evade the onus because I am not. I have admitted to much more than that. But to give you a truthful answer, I can't.

Mr. Moss. In all of these productions, it was so generally known that it was never a matter where there ever had to be any conscious effort to communicate the fact?

Mr. ENRIGHT. I am not saying that. What I am saying is that if I did tell Mr. Felsher I do not recall. If Mr. Felsher came in and suggested to me and I assented I do not recall that either. What the communication was on this specific matter I do not recall.

Mr. Moss. When you planned the show, or you bought it or however you acquired it, and you went into production, was it planned to be a controlled show?

Mr. ENRIGHT. No. Not at the time. We decided to let the show start and see what happens to the show.

Mr. Moss. How long did it run before it was controlled?

Mr. ENRIGHT. I don't know. We did control the show some time after it started. How long after I don't know. May I say, sir, I think I have created the wrong impression. It was not intended that this be a show on which no controls are exercised but the premise was, let us start the show and see when we do have to exercise controls and then exercise them. At the beginning I felt no control should be exercised.

Mr. Moss. But you had the feeling that ultimately you would have to have controls?

Mr. ENRIGHT. I felt at one time or another controls would be exercised.

Mr. Moss. To exploit the show?

Mr. ENRIGHT. That is right.

Mr. Moss. Do you recall any of this type of show that was planned not to be controlled?

Mr. ENRIGHT. Yes, sir. We have one show—we had one show—which we created in our office and is now the property of NBC. It is a show called "Concentration."

Mr. Moss. Called what?

Mr. ENRIGHT. "Concentration." It is a game show. The highest rated show on NBC. I decided that there was to be no controls on that show. Not for any moral reasons but simply I felt that the factors and the essentials of this particular show were so strong that the show could ride without any artificial excitement interjected into that show. It has happened. It is terribly strong programwise and did not require any injection of artificial stimulants.

Mr. Moss. I have been puzzled why there should be such general knowledge in the production that these shows were controlled and there was a normal policy of control and yet it should not have somehow gotten up to the top network personnel. Many of the officials of networks have had experience, haven't they, in production?

Mr. ENRIGHT. I should say a number of them in the program department, yes. In one form or another.

Mr. Moss. How closely does the program department of a network work with the producer?

Mr. ENRIGHT. Depending on the competence of the producer it is in inverse ratio. The more competence the more he becomes isolated. I would be immodest if I characterized my relation with the networks. I won't. But ordinarily the consultant policy—occasionally if something happened on a program they will bring it to his attention and ask for correction.

Mr. Moss. But you have a feeling that either natural curiosity or some process of osmosis as has been suggested, by some means these people should have had some knowledge of what was going on.

Mr. ENRIGHT. I can't answer that. All I can do—

Mr. Moss. I will ask you for an opinion.

Mr. ENRIGHT. You ask me for an opinion which is unfair because there has been testimony here of certain people and I do not impugn their intentions. I am just stating that certain testimony has indicated that several network executives and agency executives are naive by their own admissions. Therefore, I must say they are naive people.

Mr. Moss. Perhaps this may be unfair. Has it been your experience in dealing with them that they are naive people in fact?

Mr. ENRIGHT. I really can't answer that. I am lost.

Mr. Moss. You have no opinion as to whether or not they were naive in their dealings with you?

Mr. ENRIGHT. No, they were not naive in their dealings with me.

Mr. Moss. That is all, Mr. Chairman.

Mr. ENRIGHT. May I add something here, Mr. Chairman, to Mr. Moss?

The CHAIRMAN. Yes.

Mr. ENRIGHT. Mr. Moss, this is completely gratuitous but I would like to be on the record. Yesterday you criticized very severely a practice of ours on "Tic-Tac-Dough." We had many practices on "Tic-Tac-Dough." The one reprehensible one and the one most troubled my conscience is the one you criticized. For this there is no excuse and no mitigation.

Mr. Moss. I think with the statement I certainly agree.

Mr. ENRIGHT. We are in accord.

The CHAIRMAN. Mr. Enright, you are here under subpoena.

Mr. ENRIGHT. I am.

The CHAIRMAN. Of course, until the committee has concluded its hearings during this session you will make yourself available, but I think if you wish to go back home over the weekend it will be all right; just be back Monday.

Mr. ENRIGHT. May I ask how long it is anticipated for these hearings to continue so I can make my plans?

The CHAIRMAN. You know I wish I could answer that question with some definiteness because I said at the outset of this week that we were going to conclude tonight. But we are unable to conclude. In the morning we are going to get with the Chairman and others of the Federal Communication Commission. So we will be back on Monday, and we hope to conclude on Monday.

Mr. Kintner of the Federal Trade Commission will be here.

You may be excused until Monday.

Mr. ENRIGHT. Thank you.

The CHAIRMAN. The committee will go into executive session and we would like to ask that the room be vacated as expeditiously as possible and may I ask Mr. Felsher if he will come back?

The committee will adjourn this public session until 10 o'clock in the morning.

(Whereupon, at 6:10 p.m. the committee was recessed, to reconvene at 10 a.m. Saturday, October 10, 1959.)

The special subcommittee met at 6:15 p.m. in executive session, in room 1334, New House Office Building, Hon. Oren Harris (chairman) presiding, a quorum being present.

(The testimony taken at this executive session was released by the subcommittee by vote taken November 3, 1959.)

The CHAIRMAN. The committee will be in order.

Let the record show that the committee is in executive session, and Mr. Felsher is returning to the witness stand.

TESTIMONY OF HOWARD FELSHER; ACCOMPANIED BY CHARLES FISHER, ATTORNEY

The CHAIRMAN. Mr. Moss.

Mr. Moss. Mr. Chairman, we had reached the point where Mr. Felsher replied to a question of mine and cited a kinescope shown this morning as one where there had been a series of eight or nine ties.

My question was: Was this a fixed program?

Mr. FELSHER. My answer is, "Yes, it was."

Mr. Moss. Both contestants?

Mr. FELSHER. Both contestants.

Mr. Moss. That answers my question, Mr. Chairman.

The CHAIRMAN. Does anybody else have any question?

Mr. ROGERS. That was the program showing Captain O'Rourke and Mr. Martin Dowd?

Mr. FELSHER. That is right.

I would like to point out, if I can, that Captain O'Rourke carries in his body over a dozen pieces of shrapnel that he acquired in Korea.

The CHAIRMAN. What?

Mr. FELSHER. Captain O'Rourke carries in his body over a dozen pieces of shrapnel that he acquired in Korea when he won the Distinguished Service Cross.

The CHAIRMAN. As much as I sympathize with any injured veteran and as much as I applaud the services of any American soldier for offering his life on behalf of his country, and of course all Americans have great deep sympathy and are deeply indebted to these boys for it, it does not give anybody a license because of that very fact then to return and commit fraud or any other act on the American people.

Mr. Moss. Mr. Chairman, on that point, I think inasmuch as we forced out the name here, let me make it very clear that in my role as a member of the House of Representatives, I am far more disturbed at what Captain O'Rourke has done than I would be of the average civilian. He might be General O'Rourke someday with responsibility for very large sums of money. If he is corruptible, it is well that we find it out.

Mr. ROGERS. I have one more question, Mr. Chairman.

That is the program, Mr. Felsher, where Captain O'Rourke had \$140,000 plus, and Mr. Martin Dowd won the contest and Captain O'Rourke left with \$108,000, plus?

Mr. FELSHER. Yes.

Mr. ROGERS. Did he get the \$108,000?

Mr. FELSHER. He did.

Mr. ROGERS. Thank you, sir.

The CHAIRMAN. Captain O'Rourke knew that he was going to have this substantial money deduced from the \$140,000 when he knew he was going to lose?

Mr. FELSHER. He did not know any specific figure. But he knew something would be done. The amount that he lost would be deducted.

The CHAIRMAN. Thank you very much.

You may be excused.

Mr. FELSHER. I should like to thank you for my telling this in executive session and for keeping the names of the contestants out of these hearings.

The CHAIRMAN. Very well.

The committee is adjourned.

(Thereupon, at 6:20 p.m., the committee proceeded to other business.)

The special subcommittee met at 7 p.m. in executive session, in room 1334, New House Office Building, Hon. Oren Harris (chairman) presiding, a quorum being present.

(The testimony taken at this executive session was released by the subcommittee by vote taken November 3, 1959.)

The CHAIRMAN. The committee will come to order.

Let the record show this is an executive session at which Mr. Albert Freedman, who testified before this committee in executive session Wednesday night, October 7, has returned in accordance with the understanding at the conclusion of the session that night.

Mr. Freedman, will you take the witness chair?

Mr. Charles Murphy is counsel for Mr. Freedman. Let the record show Mr. Murphy is accompanying Mr. Freedman to advise him.

Mr. Freedman, we have had a discussion about your reappearance in connection with your testimony involving one Charles Van Doren, who was a contestant on your show.

As I understand, you are unwilling to give any information or testimony at this time regarding the appearance of Mr. Van Doren as to his part in connection with television show "Twenty-one," for the same reason that you asked that your testimony be taken in executive session, as it would tend to incriminate, degrade, or defame some person.

In this instance, it would very likely be Mr. Van Doren that you would have in mind.

TESTIMONY OF ALBERT FREEDMAN; ACCOMPANIED BY CHARLES MURPHY, COUNSEL

Mr. Freedman. Is this for the record, sir?

The Chairman. Yes.

(Mr. Freedman consulted with his attorney.)

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. You are familiar with the fact that Mr. Van Doren sent a wire to this committee Tuesday night which we received Wednesday morning, the 7th of October, in which he requested that his statement be put in the record, his denial of any assistance that had been given him in connection with his appearance on television quiz show "Twenty-one," and that he had so stated to the grand jury and so stated to members of our staff, and that he requested that his statement of denial be included in this record; that he made himself available to the committee to reiterate such statement. You are familiar with that?

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. You are now familiar with the fact that as chairman of this committee, I sent him a wire, Wednesday evening, in which we accepted his invitation to appear. Let me read it:

The committee is glad to comply with your request to appear and testify and respectfully invite you to appear before the committee either Thursday noon, October 8, or Friday morning, October 9. Please advise the time we may expect you.

As of this date Mr. Van Doren has not advised this committee that he would appear. Should Mr. Van Doren appear and testify before the committee, your testimony with reference to his appearance would be important to this committee.

As I advised you a few minutes ago, we would want from you only two things that we know of at this time:

No. 1, we would want you then to state whether or not you, in your position, in connection with the show, gave any assistance to Mr. Van Doren in connection with his appearance on the quiz show.

No. 2, whether or not, should Mr. Van Doren say that you attempted to obtain a loan from him during the time he was appearing on the quiz show, we would want you to state whether or not that was true.

As I understand from you, you are unwilling to answer those questions at this time.

(Mr. Freedman consulted his attorney.)

Mr. FREEDMAN. I never asked this man for a loan at any time. It is a lie. I want to get that on the record now.

(Mr. Freedman consulted his attorney.)

Mr. MURPHY. He asked if he is allowed to do that. I have to tell him I do not know.

Mr. FREEDMAN. You make it sound that I am reluctant to answer that second question.

I definitely did not ask him for a loan at any time. It is a lie.

The CHAIRMAN. In other words, the second part of the question which we have asked you are willing now, as you have just stated for the record, to make it very clear.

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. I have advised you the source of the story with reference to the loan, that it came from a reputable individual; is that not true?

Mr. FREEDMAN. From NBC; yes, sir.

The CHAIRMAN. And the name of the man from NBC who made this information available.

Mr. FREEDMAN. That is right.

The CHAIRMAN. What was the name?

Mr. FREEDMAN. James Stabile. According to the statement you read, it was sent by Mr. James Stabile.

The CHAIRMAN. You know Mr. Stabile?

Mr. FREEDMAN. I know of him.

The CHAIRMAN. You know of him of who he is?

Mr. FREEDMAN. Yes.

The CHAIRMAN. Do you know Mr. David Levy?

Mr. FREEDMAN. No, sir; I don't. I know of him.

The CHAIRMAN. He is vice president in charge of television network programing?

Mr. FREEDMAN. Yes.

The CHAIRMAN. You know that is the source of the information that we have with reference to the loan?

Mr. FREEDMAN. That is right.

The CHAIRMAN. Now, you are unwilling at this time, then, to make any comment on the record with reference to whether or not Mr. Van Doren received any assistance from you by having questions and answers in advance of the show?

Mr. FREEDMAN. Yes, sir.

Can I go off the record, sir?

The CHAIRMAN. I would like for you to state on the record whether you are willing or unwilling to make such statement?

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. What?

Mr. FREEDMAN. May I please go off the record now?

The CHAIRMAN. I would like again for you to state for the record whether you are willing or unwilling to at this time make such statement?

Mr. FREEDMAN. I have stated I am unwilling at this time to make a statement.

The CHAIRMAN. Is it the same reason that you asked to be heard in executive session?

Mr. FREEDMAN. That is right.

The CHAIRMAN. That is, that you did not want to mention names in connection with the show that would tend to defame, degrade, or incriminate?

Mr. FREEDMAN. That is right.

The CHAIRMAN. It is for the same reason at this time you are unwilling to testify as to whether or not you gave such assistance to Mr. Van Doren, because Mr. Van Doren has not yet testified?

Mr. FREEDMAN. That is right.

The CHAIRMAN. If and should Mr. Van Doren testify, then would you be willing to testify as to the facts?

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. You want to go to Mexico?

Mr. FREEDMAN. That is where I live, sir. Yes, sir.

The CHAIRMAN. Where your family is?

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. And where you live?

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. With this understanding, if the committee feels that it is desirable and necessary for you to come back and testify as to the facts in connection with this, will you come back?

Mr. FREEDMAN. Yes, sir.

Yes, sir; I say again.

The CHAIRMAN. I heard you.

Mr. Murphy, you have been in this matter as counsel for some time?

Mr. MURPHY. Yes, sir.

The CHAIRMAN. You have known him only a brief time, I assume. You know something about the associations he has. Are you satisfied that Mr. Freedman will comply should the committee desire?

Mr. MURPHY. I am, sir. I have confidence that he will do so.

The CHAIRMAN. Mr. Enright, you have also testified that you have been an associate of Mr. Freedman, and he an associate of yours; you are familiar with this entire situation.

Are you of the opinion that if the committee desires the presence of Mr. Freedman back here that he will comply?

Mr. ENRIGHT. I am.

The CHAIRMAN. You, too, at the proper time would make every effort to see that was carried out?

Mr. ENRIGHT. Yes, sir.

The CHAIRMAN. Gentlemen of the committee, that is just about the situation.

How much advance time or notice do you feel you would have to have, Mr. Freedman, to come back?

Mr. FREEDMAN. I would like to have as much as possible because it is not always that easy to get reservations on a plane. Two to three days I would appreciate.

The CHAIRMAN. That seems to be reasonable.

I think the record should also state at this moment, or perhaps it has, that you did come this time from Mexico because the committee indicated that it would like to have your appearance?

Mr. FREEDMAN. Yes, sir.

The CHAIRMAN. And because you yourself wanted to clear up some of these things that we have gone into since you have been here as a witness?

Mr. FREEDMAN. That is right, sir.

The CHAIRMAN. Mr. Lishman, do you have anything else?

Mr. LISHMAN. Naturally there are a number of questions I would like to ask the witness, but they were all related to Mr. Charles Van Doren.

As I understand, the witness is not to testify on that subject matter at the present time but will do so later provided all the facts occur which have already been placed in the record.

The CHAIRMAN. That is true. He will appear later to testify if such occurs.

With that understanding, the Chairman, on behalf of the committee, thanks you, Mr. Freedman, Mr. Enright, and also Mr. Murphy, for your valuable assistance.

You may be excused under the circumstances and we will give you notice should we find it necessary for you to return, with the understanding that we have here this evening.

(Thereupon, at 7:45 p.m., the committee adjourned.)

INVESTIGATION OF TELEVISION QUIZ SHOWS

SATURDAY, OCTOBER 10, 1959

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The special subcommittee met at 10 a.m. in the caucus room, Old House Office Building, Hon. Oren Harris (chairman) presiding.

Present: Representatives Harris, Mack of Illinois, Rogers of Texas, Flynt, Moss, and Springer.

Also present: Robert W. Lishman, counsel to the subcommittee; Beverly M. Coleman, subcommittee principal attorney; Mary Louise Ramsey, subcommittee attorney; Charles P. Howze, subcommittee attorney; Herman Clay Beasley, subcommittee clerk; and Jack Marshall Stark, minority counsel.

The CHAIRMAN. The committee will come to order. At the opening of these hearings on Tuesday, among other things, a letter from the Federal Communications Commission, which was in reply to a letter from me as chairman of this subcommittee, to the Chairman of the Commission, was included in the record. It had to do with the adequacy of the present law in dealing with matters which this committee had developed during the course of these hearings in connection with deceptive and dishonest schemes in connection with certain types of programs commonly referred to as quiz programs.

This morning we have the Chairman of the Commission, who is here for the purpose of developing the present law, or the adequacy of any law in dealing with problems of this kind. This is a most pertinent part of our hearings insofar as the legislative purpose of this committee is concerned.

Mr. Doerfer, will you be sworn, please.

Do you solemnly swear that the testimony you will give this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

TESTIMONY OF JOHN C. DOERFER, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION; ACCOMPANIED BY JOHN L. FITZGERALD, GENERAL COUNSEL; AND HAROLD G. COWGILL, CHIEF, BROADCAST BUREAU

Mr. DOERFER. I do.

Mr. Chairman, I ask permission to read into the record a prepared statement.

The CHAIRMAN. I think for the record it would be appropriate to identify the staff members you have with you.

Mr. DOERFER. Immediately to my right is Mr. John FitzGerald, the General Counsel of the Federal Communications Commission, and to his right Mr. Harold Cowgill, Chief of the Broadcast Bureau of the Federal Communications Commission.

The CHAIRMAN. You may proceed.

Mr. DOERFER. My name is John C. Doerfer and I am Chairman of the Federal Communications Commission. Although the Commission has had observers attending your hearings on the television quiz shows and has followed the testimony of the witnesses this week, obviously we have not had an opportunity to evaluate the material. We will be glad to do so upon the basis of the full record of this week's proceedings.

The Commission first became aware that a certain television quiz show program may have been conducted in a deceptive manner on July 31, 1958. On that day, Mr. Jack O'Grady, a New York Post correspondent, submitted to the Commission's Washington office an affidavit executed by Mr. Eddie Hilgemeier of New York City.

Now, Mr. Chairman, the balance of this page and the first full paragraph on the next is a summarization of Mr. Hilgemeier's affidavit and I understand that has been introduced into the record.

The CHAIRMAN. Yes.

(The summarization of Mr. Hilgemeier's statement referred to above follows:)

In his affidavit executed on July 25, 1958, Mr. Hilgemeier stated, in substance, that while a standby contestant on the "Dotto" program, he noticed that a notebook belonging to one of the contestants contained the answers the contestant had just given on the air and also answers "which appeared to be subsequent shows" and that he observed an "undue amount" of familiarity between this particular contestant and the employees of the studio and "associates" of the show. In his statement, Mr. Hilgemeier continued that he and the losing contestant obtained legal counsel, that the producer of the show was informed of what he had found, and that the producer, claiming that he could not understand how the one contestant got the answers, stated to Hilgemeier that if he would overlook the matter he could participate on a later show and be "guaranteed" prize money. Mr. Hilgemeier asserted that the winning contestant did not appear on "Dotto" the following day, that the master of ceremonies explained on the air that she was ill and would be back on the show when she recovered; but that, however, to Mr. Hilgemeier's knowledge she had not returned to the show since that date. The affidavit stated an offer that was made of \$500 by the show's producer to Mr. Hilgemeier to avoid legal suit was refused by him and he instructed his attorney to point out to the producer that he felt he had been "hurt careerwise," that he had been a contestant on other television shows on which he had earned a "good reputation," that he depended as an actor upon television in part for his livelihood, and that he would not "jeopardize all that." The affidavit also states that subsequently, he accepted the producer's offer of \$1,500, and that he believes that, among other things, he signed a statement that he was being paid in lieu of becoming a contestant on "Dotto." Mr. Hilgemeier stated that the losing contestant settled for \$4,000. Attached to the affidavit was a photostatic copy of what purports to be a page from the notebook.

Mr. DOERFER. I will skip that then.

The whereabouts of Mr. Hilgemeier, not disclosed in the affidavit, was ascertained from Mr. O'Grady, and on August 11, 1958, the Commission's staff was able to communicate with Mr. Hilgemeier, ascertain his address, and receive from him confirmation of the affidavit. By letter of that same day, the Commission acknowledged receipt of the affidavit to Mr. Hilgemeier and advised him that the Commission was inquiring into the matter.

On the same day, August 11, 1958, a letter was sent to Columbia Broadcasting System, the network involved, enclosing a copy of the affidavit and requesting a statement concerning it within 15 days.

On August 13, 1958, Mr. Thomas K. Fisher, CBS general attorney, contacted the Commission's staff by telephone and assured the Commission of the serious concern of CBS about the matter and that the network was already investigating the facts, and we offer that letter in evidence.

The CHAIRMAN. It will be received.
(The letter referred to follows:)

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., August 11, 1958.

COLUMBIA BROADCASTING SYSTEM, INC.,
New York, New York

GENTLEMEN: The Commission has received an affidavit executed by Mr. Eddie Hilgemeier, of New York City, in which Mr. Hilgemeier states that in connection with a presentation of the "Dotto" quiz program on the CBS television network on May 20, 1958, one of the contestants on the program received in advance answers to the questions which would be asked of her. A copy of this affidavit is enclosed.

It is requested that you submit a statement concerning the enclosure within 15 days.

Very truly yours,

MARY JANE MORRIS, *Secretary.*

Mr. DOERFER. Mr. Fisher, by letter to the Commission dated August 14, 1958, stated that the "Dotto" program was produced by Marjeff, Inc., owned by Frank Cooper, Sylvia Cooper, and Sy Fisher, and that some or all of these individuals are owners of Frank Cooper Associates, mentioned in the affidavit; that the show was sold by Marjeff to Colgate-Palmolive Co.; that Colgate-Palmolive had purchased time on the CBS television network for the presentation of this show "pursuant to the standard agreement between the network and advertisers;" that the program was broadcast on the network from 11:30 a.m. to 12 noon, 5 days a week.

The letter stated that CBS has "no financial interest in the program." The letter also said that the matters referred to in Mr. Hilgemeier's affidavit first came to the attention of CBS on Friday, August 8, 1958. It stated that around noon of that date, Ted Bates & Co., Inc., the advertising agency for Colgate-Palmolive, called CBS stating that on the previous day Mr. Hilgemeier had called at the offices of Colgate-Palmolive and, among other things, had left a copy of the affidavit with Colgate-Palmolive; that neither Colgate-Palmolive nor Ted Bates had any information concerning the incident of May 20 or any events subsequent thereto as alleged in the affidavit prior to Mr. Hilgemeier's visit to Colgate-Palmolive on August 7; that since that time CBS had been engaged in investigating the facts of the matter, and that similar investigations were then being made by counsel for Ted Bates and counsel for Colgate-Palmolive.

In this connection, CBS stated that the network's counsel and counsel for Ted Bates interviewed representatives of the producing company and Marie Winn, the contestant who allegedly received the answers in advance; that on Monday and Tuesday of that week they were at the studio prior to and during the course of the broadcast in question, where they interviewed additional personnel of the producing company; that on the afternoon of the day preceding the date of

its letter, together with counsel for the advertising agency and counsel for the sponsor, CBS interviewed Mr. Eddie Hilgemeier.

In conclusion, CBS states that it views the allegations contained in the affidavit "in a most serious light;" that it has taken and is continuing to take all steps it believes necessary to reach a conclusion but that there remain a number of leads and matters to be covered before it can reach any final conclusions in the matter.

Mr. Fisher stated as his tentative conclusion that the winner had received some advance information but that he could not say that the program was tainted throughout, for the instant case may have been an isolated situation.

On August 21, 1958, CBS filed a letter dated August 18, 1958.

We offer that for the record.

The CHAIRMAN. It may be received.

(Letter referred to follows:)

CBS TELEVISION,
New York, N.Y., August 18, 1958.

Your reference 8421

HON. MARY JANE MORRIS,
Secretary, Federal Communications Commission,
Washington, D.C.

DEAR MISS MORRIS: This will supplement the letter of Thomas K. Fisher, vice president and general attorney of CBS Television, dated August 14, 1958, concerning the matter relating to the "Dotto" program, referred to in your letter of August 11, 1958. I am writing at the time because Mr. Fisher left on his holiday yesterday, Sunday morning, after our investigation had been completed and our decisions made.

Since Mr. Fisher's letter to you, we have obtained evidence that the supplying of answers by Marjeff, Inc., the independent producing company of "Dotto," to certain contestants prior to the telecast occurred in instances other than the one referred to in the Hilgemeier affidavit. In addition, at a meeting with representatives of the producing company on Friday, August 15, these practices were finally admitted by the producing company although they had been denied at our meeting of investigation on the night of August 8. Accordingly, we reached the conclusion, with which the sponsor, Colgate-Palmolive Co., concurred, that the program, with its misleading implications to the public, must be withdrawn immediately. On Saturday, August 16, we exercised the rights reserved to us under our facilities contract with the sponsor's advertising agency and gave notice that the "Dotto" program was no longer acceptable to us as program material. Colgate on the same day notified the producing company that it was canceling the program, effective immediately, and another program has been substituted beginning today, Monday, August 18.

Because of the urgent desires of the producing company that this matter receive no more publicity than is absolutely necessary, and in the light of the fact that the program is no longer on the air, it is respectfully suggested that, in order not unduly to injure any third person, this letter be placed in the "not for public inspection" file.

If there is any other information you desire in this connection, please let us know.

Respectfully yours,

R. A. VORSLING.

MR. DOERFER. On August 21, 1958, CBS filed a letter dated August 18, 1958, supplementing its earlier response. CBS stated that since its initial response, it had obtained evidence that the supplying of answers by Marjeff, Inc., the independent producing company, of "Dotto," to certain contestants prior to the telecast, occurred in instances other than the one referred to in the Hilgemeier affidavit; that at a meeting with representatives of the producing company on Friday, August 15, 1958, these practices, "were finally admitted by the

producing company"; and that, accordingly, on August 16, 1958, CBS exercised "the rights reserved to us under our facilities contract with the sponsor's advertising agency" and gave notice that the "Dotto" program was no longer acceptable to it as program material.

According to the statement, on the same day, Colgate notified the producing company that it was canceling the program "effective immediately."

It should be noted at this point that "Dotto" was also broadcast on the NBC television network on consecutive Tuesday evenings from July 1, 1958, to August 12, 1958, under the same producer and sponsor as on CBS. At the sponsor's request, it was replaced by another program on August 19, 1958.

On August 21, 1958, a further letter was addressed to CBS asking to what extent the network had participated in the production, supervision, and control of "Dotto."

We offer that for the record.

The CHAIRMAN. It may be received.

(Letters referred to follow:)

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., August 21, 1958.

COLUMBIA BROADCASTING SYSTEM, INC.,
New York, N.Y.

GENTLEMEN: This is with reference to the exchange of correspondence between the Commission and CBS concerning the "Dotto" program. In your letter of August 18, 1958, you advised the Commission as follows:

"Since Mr. Fisher's letter to you, we have obtained evidence that the supplying of answers by Marjeff, Inc., the independent producing company of "Dotto," to certain contestants prior to the telecast occurred in instances other than the one referred to in the Hilgemeier affidavit. In addition, at a meeting with representatives of the producing company on Friday, August 15, these practices were finally admitted by the producing company although they had been denied at our meeting of investigation on the night of August 8. Accordingly, we reached the conclusion with which the sponsor, Colgate-Palmolive Co., concurred, that the program, with its misleading implications to the public, must be withdrawn immediately. On Saturday, August 16, we exercised the rights reserved to us under our facilities contract with the sponsor's advertising agency and gave notice that the "Dotto" program was no longer acceptable to us as program material. Colgate on the same day notified the producing company that it was canceling the program, effective immediately, and another program has been substituted beginning today, Monday, August 18."

Your letter recognizes the importance of avoiding and eliminating any program material which contains "misleading implications to the public." As you know, the Commission has stated that the practice of using a broadcast station's facilities for improper purposes raises serious public interest questions. Accordingly, it is requested that you submit to the Commission as expeditiously as possible the following information:

1. Set forth in detail the extent to which CBS participated in the production, supervision and control of the "Dotto" program prior to and during its broadcast by CBS.

2. Whether any employee or official of CBS had knowledge of the fact that contestants on the "Dotto" program were being supplied with answers prior to their appearances on the program.

3. What affirmative procedures are presently followed by CBS to insure avoidance of situations such as that which pertained with respect to the "Dotto" program.

4. What precautions are contemplated by CBS to insure against a repetition of the situation in the "Dotto" case.

Very truly yours,

MARY JANE MORRIS, *Secretary.*

CBS TELEVISION,
New York, N.Y., September 18, 1958.

Your references: S410, 800531, 800571.

HON. MARY JANE MORRIS,
Secretary, Federal Communications Commission,
Washington, D.C.

DEAR MISS MORRIS: This is in response to your letter of August 21, 1958, in which you requested certain additional information concerning the "Dotto" program. Your questions, and the information you requested, are as follows:

1. Set forth in detail the extent to which CBS participated in the production, supervision, and control of the "Dotto" program prior to and during its broadcast by CBS.

As set forth in our letter of August 14, 1958, "Dotto" was produced by an independent producing company, Marjeff, Inc., with which Colgate-Palmolive Co. contracted for its production for broadcast. Colgate-Palmolive had purchased time on the CBS-Television network for broadcast of the "Strike It Rich" program and, pursuant to the terms of the facilities contract between Colgate-Palmolive and the network, Colgate-Palmolive in January 1958, exercised its right to substitute another program, which program was "Dotto," the original broadcast of which began on January 6, 1958. CBS-Television network had no contractual relationship with Marjeff, Inc., with respect to the program. The production staff of the "Dotto" program was employed by Marjeff, Inc. CBS-Television network supplied, pursuant to a contract with Colgate-Palmolive, a studio and other "below the line" elements for the program including such personnel as a unit manager, studio manager, technical director and stagehands.

In accordance with its regular practice of supervising the nature of all programs broadcast over its facilities, the program and editing departments of CBS-television network did review, prior to acceptance of the "Dotto" program for broadcast over its facilities, the format and composition of the program to determine whether they met the program standards of the network. In addition, at the request of Ted Bates & Co., Inc., on one occasion representatives of the program department had met with representatives of the agency and the producer shortly after the agency had selected "Dotto" from among several possible programs, to recommend improvements in the format and sets of the program as shown in an audition print presented by the producer. None of the matters discussed pertained to the questions or the handling of contestants.

Having satisfied itself that the format and composition of the program as proposed met its standards,¹ CBS-Television network did not maintain supervision or control of the day-to-day details of production, although, as in the case of all programs broadcast on the network, a continuing review by the editing department was made of the continuity used and the general manner in which the program was being presented. Since the program was being produced by an independent producing company, the network did not supervise the selection of contestants, the preparation of the questions, the rehearsal of the shows, etc.

2. Whether any employee or official of CBS had knowledge of the fact that contestants on the "Dotto" program were being supplied with answers prior to their appearances on the program.

We have interrogated program personnel of the network who might have had any responsibility in connection with the broadcast of "Dotto," as well as the personnel immediately responsible for furnishing the below the line elements pursuant to the "below-the-line" contract, referred to above. Our investigation has not disclosed that any employee or official of CBS had any knowledge that contestants on the "Dotto" program were being supplied with answers prior to their appearances on the program. As stated in our letter to you of August 14, 1958, a claim to that effect first came to the attention of CBS-Television network on Friday, August 8, 1958. An investigation was immediately instituted and, as stated in our letter of August 18, 1958, the day following our obtaining the admission of improprieties by the producing company, CBS-Tele-

¹ These standards include the NAB code and regulations which are a part of the standard facilities contract between CBS-Television network and advertisers. These regulations, which were in the facilities agreement under which "Dotto" was furnished, are set forth on exhibit A page in the Network Television Facilities Agreement form, attached hereto.

vision network advised the sponsor that the program was no longer acceptable to it. A copy of our letter to the agency for Colgate-Palmolive is attached.

3. What affirmative procedures are presently followed by CBS to insure avoidance of situations such as that which pertained with respect to the "Dotto" program.

4. What precautions are contemplated by CBS to insure against a repetition of the situation in the "Dotto" case.

CBS-Television network has always assumed responsibility for material broadcast over its facilities and has long-established safeguards designed to prevent the broadcast of any material that does not conform to its program policies, including any material or program which is or might be misleading to the public. Among these safeguards are the current contractual provisions in the network facilities agreement relating to the broadcast of outside-produced programs and the review of material both before and during broadcast by the editing and program departments, referred to above.

During the week following the cancellation of the "Dotto" program and prior to our receipt of your letter of August 21, 1958, an investigation was instituted jointly by the network's legal and program departments of each CBS-Television network program having formats involving competition by members of the public for prizes. This investigation included questioning of outside producers as to the methods and mechanics followed on each such program, including the procedure in selecting the questions or other material to be used on the program; the practices followed in storing or safekeeping such program material before it is utilized; the number of persons, and their positions in the producing organization, to whom knowledge of the material is available before and at the time of the broadcast; the method of screening and selecting the contestants including a statement of the standards of selection; any "warmup" or rehearsal in which the contestants or panelists participate before air time; any instructions, schooling, or conferences in which the contestants or panelists participate before air time; whether any material used in the screening or rehearsal of contestants or panelists is again utilized in the games or contests during the broadcast; whether any "hints" or other information (in the form of questions or otherwise) concerning questions to be asked on the broadcast are supplied to contestants or panelists in advance of broadcast; and the methods used to make certain that winning contestants receive the exact prize which has been announced. Written statements from outside producers setting forth security measures employed in connection with their respective programs have been requested by the network.

The following additional practices have been instituted:

1. In the case of each new program of the type in question, the program department, in conjunction with the editing department, will not only review with the outside producer the format and composition of the proposed program as has been done in the past to determine if there are any elements which might be misleading to the public, but at that time, the program policies of the network will be explained in detail to the producer and warning given against any of the objectionable practices.

2. There will be included as an exhibit to each existing and future program package agreement covering a program of the type in question a statement from the producing company containing a description of the game or contest, a description of the methods of selection of questions and participants, and warranties with respect thereto, the breach of which will constitute a material breach of the agreement.

3. There will be included as an exhibit to each existing and future facilities contract under which the advertiser provides a program of the type in question a statement from the producing company similar to that to be obtained from other outside producers under item 2, above. Provision will be included in the facilities contract that breach of the warranties in the statement will give CBS-Television network the right to refuse to broadcast the program.

4. A unit has been established and is in operation which is responsible for exercising a continuing surveillance over production practices involved in such programs and over compliance with the description of the game or contest as submitted to the network. Instructions are being issued to network personnel acting in liaison capacities with outside producers of such programs advising them to exercise closer inspection of any practices in the preparation, production and broadcast of such programs that might give rise to inferences of violations of our program standards or regulations, including particularly any practice that might indicate unfair treatment of contestants or might be misleading to the public.

The surveillance unit works in cooperation with the legal department. All reports of questionable incidents concerning the selection and treatment of contestants or in connection with questions on programs of the type in question are promptly to be referred to the legal department for investigation.

CBS-Television network has offered its full cooperation to the office of district attorney for New York County and it has and is complying with all requests of that office for records, television recordings and information respecting certain matters now being investigated by the district attorney in connection with quiz programs. Copies of a telegram sent to the district attorney's office by Mr. Hubbell Robinson, executive vice president in charge of CBS-Television network programs, together with the reply thereto from the District Attorney's office, are attached.

Finally, it may be noted that in a speech by Louis G. Cowan, president of CBS-Television network, delivered on September 16 before the Pittsburgh Advertising Club, these comments concerning quiz shows appear:

"Network television has the great responsibility of maintaining its integrity in product and in the conduct of its business affairs.

"From time to time, there are attacks on television, some of which are unjustified—some of which are justified.

"We are currently moving through a period in which the broadcasters are being attacked in regard to the conduct of certain quiz shows.

"I think it should be made abundantly clear that no program should be on the air—quiz or otherwise—that does not meet the standards of honesty and fairness.

"There have been many accusations made about quiz programs, and it is an index of the important role of television in our society that these accusations and stories have found their place on the front pages of our newspapers.

"No responsible person or organization can or does act on accusation alone. In the instance of the quiz shows, these properties usually are not owned by a network. Since these programs represent property values that may well be worth hundreds-of-thousands or millions of dollars to other people, we are obliged to act in utter fairness to their rights.

"When, however, in our opinion, there is sufficient evidence supporting such accusations, we have taken, and will continue to take, action to remove such programs from the air promptly. There can be no compromise.

"All of us in this room are aware of the accusations that have been made from time to time regarding the integrity and practices of individuals and groups in fields other than broadcasting. Sometimes these attacks are justified, and sometimes they are not.

"When they are made, and have substance, history shows that the same due diligence and fairness is practiced.

"Certainly, as broadcasters, we know and will continue to exercise our responsibility to the American people. In this, I know I express the sentiment not only of our company, but of the other networks and the individual station owners throughout the country as well."

I am authorized to state that CBS-Radio network is not currently broadcasting any program of the type which gave rise to the situation in the Dotto case. However, in the event CBS-Radio does schedule such a program, a responsible executive of CBS-Radio will make certain that the producer of the program, whether or not a CBS-Radio employee, is fully aware of the CBS-Radio policy which requires that all contestants on such programs be treated fairly and that the public at large not be misled. The producer will be held responsible for implementing this policy by bringing it to the attention of all persons having any connection with the selection of contestants, the selection of questions, or the safeguarding of answers. In addition, the producer will be held fully responsible for the compliance with this policy by all persons having any such connection.

CBS-Radio also currently broadcasts several local programs on which contestants compete for prizes of nominal value: such as, an orchid, candy, theater tickets, gift certificates, and the like. On one of such programs a weekly prize of a weekend in Las Vegas is awarded. The producers of these local programs have been reappraised of the applicable CBS-Radio policy and their responsibility for its implementation.

Respectfully yours,

THOMAS K. FISHER.

CBS TELEVISION NETWORK

A division of Columbia Broadcasting System, Inc., Network Television Facilities Agreement

Agreement made this — day of ———, 19—, by and between CBS Television Network, a division of Columbia Broadcasting System, Inc., 485 Madison Avenue, New York 22, New York (herein called "CBS Television Network") and (herein called "Agency") acting as agent for (herein called "Advertiser").

In consideration of the mutual covenants herein contained, the parties hereto have agreed and do agree as follows:

1. Schedule of Broadcasts. Subject to station acceptances, CBS Television Network shall cause television stations in the cities listed in Exhibit A, attached hereto and hereby made a part hereof, to broadcast the programs hereinafter referred to in accordance with all the provisions of this Agreement and Exhibit A, on behalf of Advertiser.

Broadcast Time Period (Day(s) and approximate hour(s) expressed in New York time current at the time of broadcast):

First Broadcast: Last Broadcast: No. weeks:
Title of Programs: Origination Point:

The term of this Agreement shall commence on the date of first broadcast, set forth above, and shall continue, unless sooner terminated, through the date of the last broadcast hereunder.

2. Products or services. The Broadcast Time Period may be used for the advertising of the following products and/or services of Advertiser, and for no other product, service or purpose without prior notice to and approval by CBS Television Network:

3. Payment. CBS Television Network shall bill Agency weekly in an amount equal to the total of the gross station time charges, studio facilities, film facilities, and any other charges specified in Exhibit A. Gross station time charges shall be subject to any applicable discounts specified in Exhibit A. Unless otherwise specified, all charges hereunder are gross charges and, if this Agreement is with a recognized advertising agency, shall be subject to the deduction therefrom of an advertising agency commission in an amount equal to fifteen percent (15%) thereof after discounts, if any. Agency shall pay CBS Television Network, in accordance with such billing, within one (1) week after receipt thereof.

4. Stations. (a) If the station scheduled to broadcast the programs in any city listed in Exhibit A is or becomes unavailable for the broadcasting of the programs at the Broadcast Time Period, the programs shall be broadcast over such station at such other time, or on such other day, as may be mutually agreed upon by CBS Television Network and Agency; provided, however, that the broadcasting of the programs over such station shall be suspended until such mutual agreement shall be reached or until such station becomes available at the Broadcast Time Period, whereupon such broadcasting shall be resumed (such stations being herein sometimes called "suspended stations" with respect to the period of any such suspension). Agency may cancel its order for any suspended station except a suspended station which is included in the CBS Television Network Basic Required Group (as defined in the then current CBS Television Network Rate Card), effective at any time by giving CBS Television Network at least two (2) weeks' notice thereof; provided, however, that if agreement is reached, at any time prior to the date on which Agency gives such notice, to broadcast the programs at the Broadcast Time Period, such cancellation shall be void. In any event, if the programs are not broadcast on any station scheduled to broadcast them, whether on an interconnected or non-interconnected basis, because such station is unavailable, or is unavailable because CBS Television Network is unable to make arrangements satisfactory to it to transmit the programs to such station, the same shall not constitute a breach of this Agreement; provided, however, that in any such event, CBS Television Network shall waive the time charges for each such station. If any such station shall, at the commencement of such unavailability, be located in a city which is included in the CBS Television Network Basic Required Group current at the commence-

ment of such unavailability, such city shall at all times be deemed to be on order for the resumption of broadcasting hereunder.

(b) If, pursuant to this Agreement, any program is broadcast at a time other than the Broadcast Time Period, such broadcast shall be by means of "recording" (as hereinafter defined) and shall be deemed to have been made during the term of this Agreement. The cost of making such recordings, and the shipping and packing charges, insurance and taxes with respect to recordings shipped within the continental limits of the United States, shall, except as otherwise provided herein, be borne by CBS Television Network; provided, however, that CBS Television Network shall furnish only one (1) recording for each two (2) stations broadcasting a program by means of recording, but if there is an odd-numbered total of such stations, CBS Television Network shall furnish one (1) additional recording. Each such recording (as distinguished from the program recorded thereon) shall remain the property of CBS Television Network, and the use of such recordings shall be subject to the applicable rules and regulations of any unions having jurisdiction, and to any conditions placed upon their use in contracts with talent and with owners of rights in literary, musical and any other material embodied therein. CBS Television Network will use its best efforts to secure the necessary television recording rights without additional charge, for musical material included in any program originally broadcast on a live basis. No such charges will be incurred without Agency's prior approval, it being understood that, subject to such approval, any such recording charges shall be paid by Agency. As used herein, the terms "recording" and "recordings" shall mean and include any recording or recordings made (whether before, during or after a broadcast transmission) by tape, wire, film, disc or any other similar or dissimilar method of recording or pre-recording aural and/or visual portions of television programs, whether now known or hereafter developed.

(c) In the event that CBS Television Network shall at any time or times add one (1) or more cities to the CBS Television Network Basic Required Group, such cities shall be deemed added to the list of cities specified in Exhibit A, effective six (6) months from the date on which such notice is given to Agency, at the network card rate, applicable to such city, current on the effective date on which such cities are so added to such list.

5. Programs. (a) All program and commercial elements, material and personnel necessary for the programs (herein individually called a "program" and collectively called the "programs") broadcast hereunder shall be furnished by Agency, except only as may be otherwise provided in an agreement (herein sometimes called the "Program Agreement") between CBS Television Network and Agency concerning the production of the programs or portions thereof by CBS Television Network for broadcast hereunder. The Programs to be broadcast hereunder, and any substitution for such programs, shall be subject to the prior approval of CBS Television Network.

(b) With respect to program and commercial material furnished by Agency hereunder (herein called "Agency Material"), Agency shall deliver to CBS Television Network at least two (2) weeks prior to the scheduled broadcast date of each program, a copy of the script for Agency Material to be used on such program, together with any filmed or recorded Agency Material to be used thereon, and a list of the creative and artistic personnel employed in connection with Agency Material (herein collectively called "talent"). Agency will edit and modify Agency Material as CBS Television Network may require, except that if time does not permit such action by Agency, CBS Television Network shall have the right to edit and modify Agency Material. CBS Television Network reserves the right to refuse to broadcast any Agency Material which does not, in its opinion, maintain an artistic or technical quality creditable to CBS Television Network, Agency and Advertiser, or which fails to conform to CBS Television Network's general program policies, or to the regulations hereinelsewhere set forth, or which in CBS Television Network's opinion may violate, or which a third party claims may violate any rights of others. In any of such events, or in the event Agency fails to furnish Agency Material as hereinabove specified or fails to furnish Agency Material at the time and place provided for the broadcast thereof, CBS Television Network may, without prejudice to any other rights which it may have, irrespective of the character of the programs, either (i) produce substitute Agency Material in whole or in part for the Agency Material which Agency was obligated to furnish, together with any necessary talent in connection therewith, or (ii) require Agency to substitute other Agency Material acceptable to CBS Television Network. If CBS Television Network

produces substitute material for the Agency Material which Agency was obligated to furnish, Agency shall pay the entire cost of the material so substituted, including talent used in connection therewith, it being understood that such cost shall not exceed the cost of the Agency Material which Agency originally proposed to furnish. Whenever possible, CBS Television Network will endeavor to notify Agency in advance of broadcast of any changes or substitution made by CBS Television Network pursuant hereto. Notwithstanding the foregoing, CBS Television Network may not itself produce, edit or modify any commercial material; provided, however, that if Agency fails to furnish commercial material or if CBS Television Network so requests and Agency fails to edit or modify such material to conform with the requirements of this subparagraph (b) for any reason other than fault on the part of CBS Television Network, or if time does not permit such action, CBS Television Network may substitute non-commercial material therefor in accordance with the provisions of this subparagraph (b), and may then broadcast the programs in accordance with all of the other provisions of this Agreement (including, but not being limited to, paragraph 3 hereof), it being understood that CBS Television Network will make such announcements concerning sponsorship as in its judgment may be required by applicable statutes or any applicable rule or regulation of any governmental body.

6. Special events. CBS Television Network reserves the right, in its discretion and without liability, to omit all or any portion of any one or more broadcasts of the programs for the purpose of broadcasting special events of public importance and political programs, either on a sustaining or commercially sponsored basis. In the event of any such omission CBS Television Network will use its best efforts to give Agency reasonable notice thereof. Agency shall not be obligated to pay for facilities not furnished as a result of such omission. In the event that CBS Television Network gives Agency at least thirty (30) days' notice of the omission of any broadcast scheduled to occur on a presidential inauguration day, on an election day generally observed in a majority of the United States, or during the ten (10) day period commencing with the opening session of the presidential nominating convention of any national political party, the provisions of the immediately following sentence shall be inapplicable to any such omitted broadcast. If CBS Television Network omits any such broadcast in its entirety, CBS Television Network shall reimburse Agency in the amount of Agency's actual, out-of-pocket costs and expenses with respect to such omitted broadcast (which costs and expenses are herein sometimes collectively called the "reimbursable cost"); provided, however, that Agency shall have used its best efforts to keep the reimbursable cost to a minimum and that the reimbursable cost is limited solely to items which, by their nature, could be used only for such omitted broadcast. If CBS Television Network omits a portion of any such broadcast, CBS Television Network shall reimburse Agency in that amount which bears the same proportion to the reimbursable cost as the length of such omission bears to (i) the length of the entire program, if the omission occurs during the entertainment portion of the program, or (ii) the aggregate length of scheduled commercial time, if the omission occurs during a commercial portion of the program, except that if such omission occurs partly during the entertainment portion and partly during a commercial portion of such program, the amount of such reimbursement shall be computed either under subdivision (i) or subdivision (ii) above, as Agency may elect: provided, however, that this sentence shall not apply to omissions which occur during the entertainment portion of any program for the purpose of making news announcements. If such omitted program shall have been recorded prior to broadcast for broadcast by means of recording, CBS Television Network shall not in any event be obligated to make such reimbursement if CBS Television Network offers to extend the term of this Agreement by the period necessary, in conformance with the frequency of broadcasts hereunder, to utilize such recorded program, or if CBS Television Network arranges for the broadcast of such recorded program at some substitute time mutually satisfactory to CBS Television Network and Agency.

7. Warranty and indemnification. Agency warrants that the broadcast of Agency Material will not violate any rights of others, and Agency will indemnify and hold harmless CBS Television Network and any station carrying the programs, from and against any and all claims, damages, liabilities, costs and expenses, including reasonable counsel fees, arising from the broadcasting of Agency Material. The exercise of or failure to exercise any of the rights reserved to CBS Television Network under paragraph 5 hereof, or otherwise, shall have no effect on any of Agency's obligations under this paragraph 7, except of course,

that Agency shall not be responsible for material furnished by CBS Television Network.

8. Additional costs. (a) It is the policy of CBS Television Network to endeavor to continue to absorb the costs of maintaining the standard forms of music licenses issued to television broadcasters by the American Society of Composers, Authors and Publishers, Broadcast Music, Inc. and Sesac, Inc. covering the non-dramatic performance, as published, of the compositions of those performing rights societies, but it reserves the right at any time to commence charging Agency, in whole or in part, the amount of such costs.

(b) If CBS Television Network shall be required to pay any sales, gross receipts, excise, use, property or similar taxes (other than income, franchise and similar privilege or corporate income taxes) newly enacted, applied or increased and levied upon or allocable to the performance by CBS Television Network of its obligations hereunder, the receipts from or direct costs of such performance, or any transaction in furtherance of such performance, then CBS Television Network shall have the right to require Agency to pay an additional amount equal to the aggregate of all such newly enacted, applied or increased taxes paid by CBS Television Network and attributable to the respective broadcasts hereunder, including any payment made after a broadcast hereunder to which such payment is attributable.

(c) If CBS Television Network elects to require Agency to make any new or increased payments pursuant to this paragraph 8, CBS Television Network shall give Agency written notice to such effect at least two (2) weeks before the effective date thereof and Agency may, upon written notice to CBS Television Network, terminate this Agreement effective within one (1) week after the receipt of such notice from CBS Television Network.

9. Termination. Either Agency or CBS Television Network may terminate this Agreement effective as of the end of the day on which the last broadcast in the thirteenth (13th), twenty-sixth (26th) or thirty-ninth (39th) week of the term hereof is scheduled hereunder, by giving the other party notice to such effect at least forty-five (45) days prior to the effective date of such termination.

10. Music clearance. Excepting musical material produced by CBS Television Network pursuant to a Program Agreement. Agency shall submit to CBS Television Network at least forty-eight (48) hours in advance of each program (seventy-two (72) hours in advance of Sunday programs and ninety-six (96) hours in advance of Monday programs), the titles of all musical compositions proposed to be used on such program, together with the names of the composers, authors and publishers thereof. CBS Television Network shall investigate such compositions with respect to the right to make a non-dramatic performance of the same on the broadcast of such program. CBS Television Network shall send Agency a written list of all compositions which have been cleared with respect to non-dramatic performance rights on such program. Anything in paragraph 7 hereof to the contrary notwithstanding, CBS Television Network will indemnify and hold harmless Agency and Advertiser against any claims, damages, liabilities, costs and expenses, including reasonable counsel fees, arising from the copyright violation through non-dramatic performance on such program of the music and lyrics, as published, of the musical numbers designated on such written list as cleared; provided, however, that Agency shall promptly notify CBS Television Network of any claim of any such violation. CBS Television Network may, at its option, assume the defense of any such claim.

11. Inability to broadcast. Any delay or interruption in broadcasting programs or failure at any time of broadcast or other facilities, in whole or in part, due to act of God, strike or threat thereof, force majeure or other cause of a similar or different nature beyond the control of CBS Television Network, shall not constitute a breach of this Agreement, and CBS Television Network will not be liable to Agency, except to the extent of allowing, in each such case not arising through Agency's fault, a pro rata reduction in the charge for the Broadcast Time Period at the rates specified in Exhibit A for each station on which any program was not broadcast.

12. Revision of charges. CBS Television Network reserves the right to increase the amounts due hereunder by revising any of the charges set forth or referred to in Exhibit A by giving Agency notice thereof not less than six (6) months prior to the effective date of any such revision. Agency agrees to pay any increases resulting from each such revision with respect to all broadcasts hereunder on and after the effective date thereof. As used herein, the term "charges" includes any or all of the component elements of the charges hereunder, including discounts and commissions applicable thereto.

13. Computation of discounts. For the purpose of computing discounts, if any, applicable to the gross charges hereunder, CBS Television Network's inability to make any broadcast or broadcasts or the omission of any broadcast or broadcasts by CBS Television Network, pursuant to paragraphs 6 or 11 hereof, shall not affect rates of discount otherwise applicable. If this Agreement is extended for any period pursuant to paragraph 6 hereof, the then current annual discount year will be similarly extended. If any discount depends upon the actual use of a minimum number of stations, a station which has been ordered for, and which has accepted, the broadcasts scheduled hereunder, but which is unavailable for a particular broadcast because of pre-emption by the station of the time of such broadcast for a special event of importance or because of temporary interruption of service, shall be deemed to have been actually used for such broadcast.

14. Changes in local time of broadcasts. The station charges appearing opposite each city listed in Exhibit A are the gross rates with respect to broadcasts in such city, based upon the assumption that the time presently observed in such city will be observed throughout the term of this Agreement. If, because of a change in the time observed in any such city, any broadcast hereunder in such city during any portion of the period in which scheduled broadcasts shall be made under this Agreement, shall be at an hour (in accordance with the time observed by such city) to which a lower or higher rate would apply for a program of similar length in accordance with CBS Television Network's network rate card applicable to such broadcast, the charges payable for such broadcast shall automatically be reduced or increased accordingly.

15. Property liability. CBS Television Network shall not be liable for loss of or damage to any property furnished by Agency for use in connection with any of the programs, except for loss or damage caused by the demonstrable gross negligence of CBS Television Network or its employees.

16. Remedies. In the event Agency shall fail to make timely payment in accordance with the terms hereof, or in the event of any other breach hereof by Agency, CBS Television Network may, at its option, in addition to any other rights which it may have, immediately cease its performance of this Agreement.

17. General. The titles of the paragraphs of this Agreement are for convenience only and shall not in any way affect the interpretation of any paragraph of this Agreement or of the Agreement itself. A waiver by either party of any of the terms or conditions of this Agreement in any instance shall not be deemed or construed to be a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations and agreements contained in this Agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, undertaking, obligation or agreement of either party. All notices required to be given hereunder shall be given in writing either by personal delivery, by mail or by telegraph at the respective addresses of the parties hereto hereinabove set forth, or such other addresses as may be designated in writing by either party. Notice given by mail or by telegraph shall be deemed given on the date of mailing thereof or of delivery of such telegram to a telegraph office, charges prepaid or to be billed. This Agreement has been made in the State of New York and shall be governed by the laws of that State applicable to contracts fully to be performed therein. This Agreement constitutes the entire agreement between Agency and CBS Television Network with respect to the subject matter herein contained, this Agreement cannot be changed or terminated orally, and, effective as of the first broadcast hereunder, supersedes all prior agreements between the parties hereto with respect to the Broadcast Time Period.

CBS TELEVISION NETWORK

A division of Columbia Broadcasting

System, Inc.

By _____

As agent for

By _____

EXHIBIT A

REGULATIONS

Agency agrees to cooperate with CBS Television Network in the broadcasting of commercial and entertainment material of the highest possible standards of excellence, and, for this purpose, to observe the following regulations in the preparation, writing and broadcasting of any aural or visual elements of the programs.

There shall be:

1. No false or unwarranted claims for any product or service.
2. No infringements of another advertiser's rights through plagiarism or unfair imitation of either program idea or copy, or any other unfair competition.
3. No disparagement of competitors or competitive products.
4. No lottery or "drawing contest".
5. No contest of any kind in which the public is unfairly treated.
6. No programs or announcements that are slanderous, obscene, profane, vulgar, repulsive or offensive, either in theme or in treatment.
7. No ambiguous statements or representations that may be misleading to the audience.
8. No appeal for funds.
9. No testimonials which cannot be authenticated.
10. No continuity or visual material which describes or depicts repellantly any internal bodily functions or symptomatic results of internal disturbances, and no reference to matters which are not considered acceptable topics in social groups.
11. No use of the Broadcast Time Period except for the advertising of products or services.

12. No advertising matter, or announcements, or programs which may, in the opinion of CBS Television Network, be injurious or prejudicial to the interests of the public, CBS Television Network and/or its affiliated stations, or honest advertising and reputable business in general.

CBS Television Network may waive any of the foregoing regulations in specific instances, if, in its opinion, good broadcasting in the public interest is served.

In any case where questions of policy or interpretation arise, Agency should submit the same to CBS Television Network for decision before making any commitments in connection therewith.

II. Additional charges: Excepting facilities paid for by Agency pursuant to a Program Agreement. Agency shall make payment to CBS Television Network for facilities used for the production, rehearsal and/or broadcast of the entertainment and commercial portions of the programs, at the following applicable rates:

(i) Studio Facilities, Film Facilities (except Film Origination), Remote Facilities and other facilities, as used, at the gross rates specified in CBS Television Network Rate Card No.

(ii) Audience Studio Facilities, as used, at the following gross rate:

(iii) Film Origination, as used, at the following gross rate for each broadcast:

(iv) Transcontinental Cable, as used, at the following applicable gross rates for each broadcast:

Eastbound:

Westbound:

(v) Television recording for delayed broadcast on the same day, as used, at the following net rate (no advertising agency commission deductible) for each such recording:

III. Discounts: Except as herein otherwise provided. Agency shall be entitled to discounts on charges for station time, as earned, in accordance with the applicable provisions of CBS Television Network Rate Card No. —. For the purpose of determining Annual Discount, if any, to which Agency may become entitled pursuant to the said Rate Card, the current annual discount year for broadcasts hereunder commences with the broadcasts of .

For the purpose of determining Over-All Discount, if any, to which Agency may become entitled pursuant to the said Rate Card, the current Over-All Discount Year for Advertiser commences on .

CBS TELEVISION NETWORK,
New York, N.Y., August 16, 1958.

TED BATES & Co., INC.
New York, N.Y.

DEAR SIRs: This is with reference to the network television facilities agreement, dated May 19, 1958, between you, acting as agent for Colgate-Palmolive Co., and us.

CBS Television Network hereby notifies you that the agency material (i.e., the program "Dotto") furnished by you for broadcast under said agreement fails

to conform to CBS Television Network's general program policies and to the regulations set forth in said agreement.

Accordingly, CBS Television Network does hereby exercise its right under said agreement to refuse to broadcast the aforesaid agency material. Such refusal is effective immediately.

Very truly yours,

J. KRUL, *Vice President.*

AUGUST 26, 1958.

TO HON. DAVID S. WORGAN,
*Executive Assistant District Attorney,
District Attorney of New York County,
New York, N.Y.*

"Because stories have appeared in this afternoon's press stating that you have evidence of irregularities in the conduct of quiz programs currently being broadcast, our counsel, Judge Samuel I. Rosenman, telephoned to you today. As he told you, we are determined, as we are sure you are, that the CBS television network facilities be denied to any programs which operate as a fraud on or mislead the public. We fully intend to take action with respect to any quiz show in which any irregularities are shown to exist.

"With that in mind, we, on our own initiative, started a week ago to make intensive inquiry into all quiz shows currently on our network. We have been unable to discover any improper procedures on any such quiz shows.

"However, we do not have the subpoena power or other powers of inquiry which are available to you. We, therefore, request that, insofar as you are able without hampering your investigation, you make available to us any information which you may develop with respect to any irregularity on any quiz show on our network so that we can take appropriate action.

"May we emphasize to you that most of these quiz shows are not owned or produced by CBS but are contracted for by a commercial sponsor from an independent producer and owner of the show. While we are anxious not to carry any programs which might defraud or mislead our audience, we deem it equally our obligation not wantonly to destroy the valuable program property of a third person simply on the basis of rumor and gossip and without having real evidence that the owner of such a property is guilty of a fraud.

"As Judge Rosenman told you, we are eager to cooperate with you to the fullest extent and to give you any information we have. We hope that you in turn will find it possible to help us in our duty to the public by giving us any information which you properly can."

HUBBELL, ROBINSON, Jr.

DISTRICT ATTORNEY OF THE COUNTY OF NEW YORK,
New York, N.Y., August 27, 1958.

MR. HUBBELL ROBINSON,
*Executive Vice President,
CBS-Television,
New York, N.Y.*

DEAR MR. ROBINSON: I acknowledge receipt of, and thank you for, your telegram of August 26, with reference to television quiz shows.

Your offer of full cooperation is sincerely appreciated.

Very truly yours,

DAVID S. WORGAN,
Executive Assistant District Attorney.

MR. DOERFER. The letter also asked whether the network had knowledge of the practice complained about; and what affirmative procedures are presently being made by CBS and what additional precautions it is contemplating to insure against a repetition of the "Dotto" situation.

On September 18, 1958, CBS submitted its reply.

The letter states that CBS conducted an investigation which failed to disclose that any employee or official of CBS had any knowledge that contestants on the "Dotto" program were being supplied with answers prior to their appearance on the program.

It further stated that, prior to the acceptance of the "Dotto" program (incident), CBS had instituted a regularly established practice of supervising the nature of all programs broadcast over its facilities and of continually reviewing the continuity used and the general manner in which programs were being presented. Its standard facilities contract with advertisers provided for cooperation with the network in its endeavor to broadcast material of the highest possible standards of excellence.

It does not appear that in programs of this nature CBS supervised or controlled the day-to-day production, the selection of contestants, the preparation of the questions, or the rehearsal of the shows.

It does not appear that CBS television network had any contractual relationship with Marjeff, Inc., with respect to the "Dotto" program. Marjeff, Inc., was an independent producer.

Accordingly, pursuant to its regular procedure with respect to shows of this nature, CBS did not supervise the selection of contestants, the preparation of the questions, et cetera.

It does appear, however, that in conformity with its regular practice of supervising program material offered for presentation over its facilities, the CBS program and editing department did review, prior to acceptance of the "Dotto" program for broadcast over its facilities, the format and composition of the program and that it was satisfied that the program, as proposed, met its standards.

CBS in its letter of September 18, 1958, further stated that it has installed certain additional precautionary practices. CBS has arranged for a closer inspection of such programs and their producers prior to acceptance of the program and it requires certain warranties from the producer.

CBS has also established a unit whose responsibility is the continuing surveillance of such programs and any questionable incidents are to be reported to its legal department.

"Dotto" was also broadcast over the facilities of NBC, although it went off the air on August 19, 1958. The Commission had received no complaint about the broadcasts of the program on the NBC television network similar to that relating to the CBS broadcasts.

However, it appeared advisable that the Commission's inquiry should have from NBC, concerning "Dotto," "Twenty-One" and any other similar quiz programs, the same information requested of and received from CBS. The Commission addressed a letter to NBC on the matter on February 12, 1959.

NBC acknowledged the letter on February 25, 1959, and said it was currently assembling the requested information. NBC again wrote the Commission on April 13, 1959.

We offer for the record these three letters.

The CHAIRMAN. They will be received.

(Letters referred to follow :)

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., February 12, 1959.

NATIONAL BROADCASTING Co.,
New York, N.Y.

GENTLEMEN: This is with reference to the program known as "Dotto," previously broadcast over your facilities and those of the Columbia Broadcasting System, Inc.

Information brought to the Commission's attention indicated that participants in the CBS program were being supplied by representatives of the program producer with answers to questions which were to be put to said participants as contestants. This information was confirmed by CBS. Pursuant to further inquiry by the Commission, CBS has advised the Commission of the extent to which it participated in the "Dotto" programs, the procedures it followed to avoid the situation which pertained in that case, and the precautions it would take for further avoidance thereof. CBS has replied to this inquiry in detail.

The Commission has not received any complaint concerning the presentation of the "Dotto" program on your network. However, the Commission is desirous of having from you the same information it requested of CBS. Accordingly, it is requested that you submit to the Commission as expeditiously as possible the following information:

1. Whether participants in the "Dotto", "21" or any other similar program received in advance the answers to questions to be asked of them.

2. Set forth in detail the extent to which NBC participated in the production, supervision and control of the "Dotto", "21" and other similar programs prior to and during their broadcast by NBC.

3. If the answer to 1 is in the affirmative, state whether any employee or official of NBC had knowledge of the fact that contestants on any of the "Dotto", "21" and other programs were being supplied with answers prior to their appearances on the program.

4. What affirmative procedures are presently followed by NBC to insure avoidance of situations such as that which pertained with respect to the "Dotto" program.

5. What precautions are contemplated by NBC to insure against a repetition of the situation in the "Dotto" case.

If the radio network handled these programs in a manner different from the television network, describe fully the differences.

By direction of the Commission.

MARY JANE MORRIS, *Secretary.*

NATIONAL BROADCASTING Co., INC.,
New York, N.Y., February 25, 1959.

Re your reference No. 8420.

Miss MARY JANE MORRIS,
Secretary, Federal Communications Commission,
Washington, D.C.

DEAR MISS MORRIS: This will acknowledge your letter to NBC dated February 12, 1959, with reference to the program known as "Dotto."

We are currently assembling the requested information with respect to that program and will furnish you with our reply as expeditiously as possible.

Very truly yours,

HOWARD MONDERER,
NBC Washington Attorney.

APRIL 13, 1959.

Re your file No. 8420.

Miss MARY JANE MORRIS,
Secretary, Federal Communications Commission,
Washington, D.C.

DEAR MISS MORRIS: This is in reply to your letter of February 12, 1959, concerning the television quiz program known as "Dotto." In response to your

numbered requests, we submit the information stated below. For convenience we have answered question No. 2 first, and have combined the answer to questions Nos. 1 and 3 next and to questions Nos. 4 and 5 last.

"2. Set forth in detail the extent to which NBC participated in the production, supervision and control of the 'Dotto', '21' and other similar programs prior to and during their broadcast by NBC."

"Dotto" was broadcast on the NBC Television Network on consecutive Tuesday evenings from July 1, 1958, to August 12, 1958, inclusive, under the sponsorship of the Colgate-Palmolive Co. At the request of the sponsor, the program was replaced by "Colgate Theatre" commencing August 19, 1958. "Dotto" was produced as a package by Frank Cooper Associates of New York City for the sponsor, which offered the program to NBC for broadcast; NBC had no contractual arrangements directly with the packager. Consequently, NBC did not participate in the production of the program other than to supply the necessary broadcast and production facilities.

Since a daytime version of the program was being broadcast by the CBS Television Network when the advertiser offered "Dotto" to us, our program and continuity acceptance departments were familiar with the content of the program as telecast to the public and considered it acceptable for the NBC Television Network. A kinescope of the program was also reviewed by our continuity acceptance department before the first broadcast on NBC.

"21" was telecast on the NBC Television Network commencing September 13, 1956; the last program was broadcast October 16, 1958. The program was originally packaged for the advertiser, Pharmaceuticals, Inc., by Barry & Enright Productions, Inc., independent contractors. NBC supplied the broadcast facilities. Prior to the first broadcast of "21," a kinescope recording of an audition program produced by Barry & Enright Productions, Inc., was subjected to NBC's usual screening by the program and continuity acceptance departments in order to determine the program's suitability for broadcast. The NBC legal department also reviewed and approved the program's contest format.

On May 2, 1957, the program property was sold to NBC. Thereafter Jack Barry and Daniel Enright produced the program for NBC under a contract whereby Barry and Enright agreed to furnish to NBC the same program elements for "21" which Barry & Enright Productions, Inc., had previously been furnishing to Pharmaceuticals, Inc.; they further agreed to make the services of their production staff available for the program. In this agreement, NBC reserved the right at any time to discontinue the furnishing by Barry and Enright of any of the program elements. Pursuant to an employment agreement between Barry, Enright, and NBC, Jack Barry was assigned as master of ceremonies on "21" and Daniel Enright was assigned to the program as executive producer. Commencing in June 1957, as a result of its purchase of the program property, NBC issued the checks to prizewinners on "21" and continued to do so until the program went off the air in October 1958.

This arrangement continued until October 6, 1958, when NBC assumed control of production of the programs. At that time Daniel Enright was relieved of his duties as executive producer and Albert Freedman, producer of "21," was replaced with an NBC staff producer. Jack Barry was continued on the program as master of ceremonies.

NBC continued to control production of the program until it went off the air on October 16, 1958.

In accordance with regular practice, an NBC employee was assigned to the program as unit manager throughout the period when the program was on NBC. In such capacity, this employee was normally present in the studio during rehearsal and broadcast and was responsible for arranging with the appropriate NBC department for the supplying of such technical facilities and personnel, graphic arts, props and other so-called below-line elements which were required. While Barry & Enright Productions, Inc., and Barry and Enright were producing the program, they ordered these elements from NBC at its regular rates.

From the foregoing, it will be seen that NBC did not actively participate in the production of "21" until October 6, 1958. Theretofore it exercised supervision and control to the extent customary when a program is furnished by an advertiser or independent packager.

"1. Whether participants in the 'Dotto', '21,' or any other similar program received in advance the answers to questions to be asked of them.

"3. If the answer to 1 is in the affirmative, state whether any employee or official of NBC had knowledge of the fact that contestants on any of the 'Dotto,' '21,' and other programs were being supplied with answers prior to their appearances on the program."

As stated in answer to question 2, NBC's participation in the presentation of "Dotto" was limited to the approval of the program content for broadcast over NBC and the furnishing to the sponsor of broadcast and production facilities for seven weekly programs commencing July 1, 1958; the series terminated with the program of August 12, 1958, after which, following accusations leveled against "Dotto's" producers, the series was replaced at the request of the sponsor with another show furnished by the sponsor. NBC has no knowledge as to whether any participant in "Dotto" received in advance the answers to questions to be asked of him, or the questions themselves.

With respect to "21," NBC understands, that Herbert Stempel and James Snodgrass, former contestants on "21," each testified in the summer of 1958 before a New York County grand jury investigating quiz shows; NBC understands that such testimony was to the effect that each received in advance questions to be asked of him and the answers thereto. NBC had been aware of the Stempel charges, which had first been brought to its attention in September 1957. At that time NBC investigated those charges and ascertained from Daniel Enright that Mr. Stempel had admitted to Mr. Enright the untruth of the charges and had signed a statement to that effect.

NBC had not known of the Snodgrass charges before the grand jury prior to circulation of news concerning them. On learning of these charges, NBC immediately commenced an investigation. Messrs. Barry and Enright and their employees engaged in the production of "21" each made an affidavit that he or she had never given Mr. Snodgrass any questions or answers or any other information concerning such questions or answers to be used on a telecast at any time (except, of course, at the time Mr. Barry actually posed the question on the telecast). One of such affidavits was from Albert Freedman, producer of "21," who testified to the same effect before the grand jury. Mr. Freedman has been indicted for perjury, has pleaded not guilty, and is awaiting trial.

As stated in answer to question 2, NBC assumed control of "21" effective October 6, 1958. NBC reviewed all of the files of Barry & Enright promptly upon assuming such control. However, at the request of the office of the district attorney of New York County, NBC has not attempted to interview any of the contestants who had appeared on "21."

NBC has cooperated with the grand jury in all respects. It has furnished canceled NBC checks representing payments to contestants on "21" and documents requested from the Barry & Enright files; its executives have been interviewed by representatives of the New York County district attorney's office and as requested have testified before the grand jury. None of these executives were able to confirm or deny the truth of the charges made by Messrs. Stempel and Snodgrass, nor did any NBC employee or official have any knowledge that other participants on the "21" programs ever received in advance the answers to questions to be asked of them or the questions themselves.

"4. What affirmative procedures are presently followed by NBC to insure avoidance of situations such as that which pertained with respect to the "Dotto" program.

"5. What precautions are contemplated by NBC to insure against a repetition of the situation in the 'Dotto' case."

Shortly after certain charges concerning the CBS program "Dotto" were made public, NBC through its own staff personnel made a study of the procedures involved in the production of quiz programs then being broadcast on the NBC network. As part of this survey, NBC obtained detailed reports from the producers of these programs covering such procedures as the selection, preparation, and briefing of contestants, the conditions of participation on the programs, the manner in which rules of play are made known to contestants, the method of preparing questions, the security of questions and answers and the handling of mail and home viewer participation, if any. In the course of the survey, the NBC unit manager on each quiz program reported in detail what he knew about the conduct of his program and whether he had observed any irregularities. The reports obtained from the unit managers did not disclose any incidents of dishonesty. All unit managers have been instructed to report any indication of irregularity or any suspicion of same. Furthermore, as stated above, NBC has assumed control of production of all Barry-Enright produced shows.

In addition, NBC has engaged the services of an independent organization, Arthur Young & Co., to make a thorough study of each quiz program in order to determine the adequacy of security measures in effect. That study is nearing completion and careful consideration will be given to any recommendations which it may include.

NBC believes that the integrity of the people with whom it does business is the best insurance against dishonesty on a quiz program. It has in the past dealt only with producers in whom it has confidence; it will continue to do so in the future. And NBC will continue to review security procedures in the production of quiz programs broadcast on NBC and to make improvements wherever feasible.

Sincerely yours,

HOWARD MONDERER.

Mr. DOERFER. In that letter it stated that "Dotto" was produced as a package by Frank Cooper Associates for the sponsor, which offered the program to NBC for broadcast. NBC had no contractual arrangements directly with the producer and did not participate in the program's production except to supply the necessary broadcast and production facilities.

NBC's program and continuity acceptance departments were familiar with the content of the program as telecast by CBS and considered it acceptable. The continuity acceptance department also reviewed a kinescope of the program before it was first broadcast on NBC.

According to NBC, "Twenty-One," first telecast on September 13, 1956, was packaged by Barry & Enright Productions, Inc., independent contractors, for the sponsor, Pharmaceuticals, Inc., with NBC supplying the broadcast facilities.

Prior to its first broadcast, a kinescope recording of an audition program was secured by NBC's program and continuity acceptance departments to determine its suitability for broadcast and the legal department reviewed and approved the program's contest format.

The NBC letter further said that on May 2, 1957, "Twenty-One" was sold to NBC; thereafter, Barry & Enright produced the program for NBC under a contract whereby they agree to furnish to NBC the same program elements for "Twenty-One" which Barry & Enright Productions, Inc., had previously been furnishing to Pharmaceuticals, Inc. and agreed to make the services of their production staff available for the program. By the agreement, NBC reserved the right at any time to discontinue the furnishing by Barry & Enright of any of the program elements.

Pursuant to an employment agreement between Barry & Enright, and NBC, Jack Barry was assigned as master of ceremonies and Enright as executive producer.

Commencing in June 1957, NBC issued the checks to prize winners on "Twenty-One" and continued to do so until the program went off the air.

The above arrangement continued until October 6, 1958, when NBC assumed control of production of the programs; at that time Enright was relieved of his duties as executive producer and Albert Freedman, producer of "Twenty-One," was replaced with an NBC staff producer. Jack Barry was continued as master of ceremonies. NBC continued to control production of the program until it went off the air on October 16, 1958.

NBC further stated that, in accordance with regular network practices, an NBC employee was assigned to the program as unit manager

throughout the period when the program was on NBC. In such capacity, this employee was normally present in the studio during rehearsals of the broadcast and was responsible for arranging with the appropriate NBC department for the supplying of such technical facilities and personnel, graphic arts, props and other so-called below-line elements which were required.

Barry & Enright Productions, Inc., and Barry & Enright, while producing the program, ordered these elements from NBC at its regular rates. NBC stated that prior to October 6, 1958, it exercised supervision and control over "Twenty-One" to the extent customary when a program is furnished by an advertiser or independent packager.

With respect to the "Dotto" program, NBC stated that it has no knowledge as to whether any participant received in advance the answers to questions to be asked of him, or the questions themselves.

With respect to "Twenty-one," NBC stated that it understands that Herbert Stempel and Charles Snodgrass, former contestants on the program, each testified in the summer of 1958 before a New York County grand jury investigating quiz shows, to the effect that each received in advance questions to be asked of him and the answers thereto.

NBC said that Stempel's charges had first been brought to the attention of NBC in September 1957, when NBC investigated the charges and ascertained from Mr. Enright that Mr. Stempel had admitted to Mr. Enright the untruth of the charges and had signed a statement to that effect.

On learning of the Snodgrass charges before the grand jury, NBC stated that it immediately commenced its investigation.

NBC said that Messrs. Barry and Enright and their employees engaged in the production of "Twenty-one" each made an affidavit that he or she had never given Mr. Snodgrass any questions or answers or any other information concerning such questions or answers to be used on a telecast at any time.

The letter said that one of these affidavits was from Albert Freedman, producer of "Twenty-one," who, according to the letter, testified to the same effect before the grand jury. The letter said Mr. Freedman has been indicted for perjury, had pleaded not guilty, and is awaiting trial.

NBC also said that it has cooperated with the grand jury in all respects. NBC stated that none of its executives was able to confirm or deny the truth of the charges made by Stempel and Snodgrass and that no NBC employee or official had any knowledge that other participants on the "Twenty-one" program ever received in advance the answers to questions to be asked of them, or the questions themselves.

The NBC letter stated that after the publication of charges concerning the "Dotto" program, NBC made a study of the producers involved in the production of quiz programs then being broadcast on its network.

NBC stated that it obtained detailed reports from the producers of such programs covering such procedures as the selection, preparation and briefing of contestants, the condition of participation on the programs, the manner in which rules of play are made known to contestants, the method of preparing questions, the security of questions and

answers and the handling of mail and home viewer participation, if any.

NBC stated that, in the course of the survey, the NBC unit manager on each quiz program reported in detail what he knew about the conduct of his program and whether he had observed any irregularities; the unit manager's reports did not disclose any incidents of dishonesty. The unit manager have been instructed to report any indication of irregularities or any suspicion thereof.

In addition, NBC engaged the services of Arthur Young & Co., an independent organization, to make a thorough study of each quiz program in order to determine the adequacy of security measures in effect. NBC said that it will continue to review security procedures in the production of quiz programs on NBC and to make improvements wherever feasible.

Copies of the Commission's correspondence with reference to the matter have been given to the committees.

The grand jury of New York County, in its investigation, contacted the Commission by letter from Mr. Stone, dated September 29, 1958, and requested that the original affidavits submitted by Mr. Hilgemeier to the Commission be submitted to it for examination and asked for information regarding Federal laws and regulations of the Commission relating to radio and television quiz shows.

We offer that letter for the record.

The CHAIRMAN. It will be received.

(Letter referred to follows:)

DISTRICT ATTORNEY OF THE COUNTY OF NEW YORK,
New York, N.Y., September 29, 1958.

HAROLD COWGILL, Esq.,
Federal Communications Commission,
Washington, D.C.

DEAR SIR: The September 3, 1958 Grand Jury of New York County is presently investigating the operation of TV quiz shows. It has heard testimony from Edward H. Hilgemeier, Jr., who also submitted a complaint to your office regarding the quiz program "Dotto." The grand jury would like to examine the original affidavit which Mr. Hilgemeier submitted to your office in connection with his complaint.

The grand jury would also appreciate information regarding Federal laws and regulations of the Federal Communications Commission relating to radio and TV quiz shows. Copies of laws, rules, regulations, and procedures would be extremely helpful. In addition, expert testimony by a member of the Commission regarding such quiz shows would be of immeasurable assistance in this investigation.

Your cooperation in this matter will be appreciated.

Very truly yours,

JOSEPH STONE,
Assistant District Attorney.

Mr. DOERFER. The grand jury also asked for the testimony of a member of the Commission regarding the matter of quiz shows.

By letter of October 14, 1958, a photostatic copy of Mr. Hilgemeier's affidavit was furnished to the grand jury.

We offer that letter as an exhibit for the record.

The CHAIRMAN. Let it be received.

(Letter referred to follows:)

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., October 14, 1958.

JOSEPH E. STONE, Esq.
Assistant District Attorney,
New York, N.Y.

DEAR MR. STONE: This is with reference to your letter of September 29, 1958, in which you state that, in connection with its current investigation of TV quiz shows, the Grand Jury of New York County would like to examine the affidavit which Mr. Hilgemeier submitted to the Commission. You also request information "regarding Federal laws and regulations of the Federal Communications Commission relating to radio and TV quiz shows" and state that "expert testimony by a member of the Commission regarding such quiz shows would be of immeasurable assistance in this investigation."

In accordance with your request, we are enclosing a photostat copy of the documents filed by a representative of Mr. Hilgemeier. In this connection, it should be pointed out that these documents have been the subject of inquiry since the matters discussed therein were submitted to the Commission. At this writing, the Commission has not concluded such inquiry. Since some of the information requested by you parallels conclusions to be arrived at in the Commission's determination, you will appreciate why it would not be feasible to attempt to supply you with such information or to have a Commission representative appear before the grand jury.

It is the Commission's policy not to discuss publicly the status or details of any pending inquiry until some formal action is taken by the Commission. It will be appreciated, therefore, if this correspondence is not made public.

Sincerely yours,

ROSEL H. HYDE, *Acting Chairman.*

(Mr. Hilgemeier's affidavit is set forth in his testimony on October 8, 1959, to be found earlier herein.)

Mr. DOERFER. The letter pointed out that the documents had been the subject of inquiry from the time the matters discussed therein were submitted to the Commission and that:

* * * At this writing, the Commission has not concluded such inquiry. Since some of the information requested by you parallels conclusions to be arrived at in the Commission's determination, you will appreciate why it would not be feasible to attempt to supply you with such information or to have a Commission representative appear before the grand jury.

It is the Commission's policy not to discuss publicly the status or details of any pending inquiry until some formal action is taken by the Commission. It will be appreciated, therefore, if this correspondence is not made public.

In a letter dated January 19, 1959, Mr. Stone renewed his request for information.

On February 18, 1959, the Commission answered, in pertinent part, as follows:

I offer these letters for the record.

The CHAIRMAN. Let them be received.

(Letters referred to follow:)

DISTRICT ATTORNEY OF THE COUNTY OF NEW YORK,
New York, N.Y., January 19, 1959.

Mr. ROSEL H. HYDE,
Acting Chairman, Federal Communications Commission,
Washington, D.C.

DEAR MR. HYDE: On September 29, 1958, this office, on behalf of the Third September 1958 Grand Jury of New York County, requested information from the Commission relating to a complaint made by Edward Hilgemeier, Jr., regarding the television program "Dotto." It was also the request of the grand jury to secure information regarding Federal laws and regulations of the Federal Communications Commission relating to radio and TV quiz shows. It was fur-

ther suggested that copies of laws, rules, regulations, and procedures would be extremely helpful, and that the expert testimony by a member of the Commission regarding such quiz shows would be of immeasurable assistance to the investigation of TV quiz shows which were being conducted by the Grand Jury.

Your letter of October 14, 1958, indicated that it was not the policy of the Commission to discuss publicly the status or details of any pending inquiry until some formal action was taken by the Commission.

The grand jury has again urged that this office renew its request to the Commission in order to secure the information requested in our letter of September 29, 1958.

It is the desire of the grand jury that you grant their request at the present time. Your early cooperation in this matter will be appreciated.

Very truly yours,

JOSEPH STONE,
Assistant District Attorney.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., February 18, 1959.

JOSEPH STONE, Esq.,
Assistant District Attorney, County of New York, New York, N.Y.

DEAR MR. STONE: This will acknowledge your letter of January 19, 1959, addressed to Commissioner Hyde, again requesting that a representative of the Commission appear before the grand jury of New York County to give testimony relating to a complaint by Edward Hilgemeier, Jr., regarding the television program "Dotto."

At the outset, I wish to state that the Commission appreciates the invitation of the grand jury and that it would not hesitate to be helpful in any matter in which such help is feasible. In the instant case, the matters on which a representative of the Commission would be questioned are those on which he, at this time, would be unable to supply definitive information. At this writing, the Commission has not concluded its own consideration of this matter and has not arrived at determinations which would permit answers by its representative that would be meaningful to the grand jury.

In your letter, you request copies of the Federal laws and the Commission's rules, regulations and procedures "relating to radio and TV quiz shows." Neither the Communications Act nor the Commission's rules contain specific references to "radio and television quiz shows." It should be noted, however, that under the provisions of section 326 of the Communications Act of 1934, as amended, a copy of which is enclosed, the Commission is prohibited from exercising the power of censorship over broadcast material by condition or regulation. You may also be interested in the enclosed copy of the Commission's public notice (FCC 57-172) of February 21, 1957, entitled "Liaison Between FCC and FTC Relating to False and Misleading Radio and TV Advertising," in which the Commission had occasion to comment on certain deceptive or misleading broadcast material. There is also enclosed a copy of title 18, United States Code, section 1343, making it a criminal offense to transmit by "interstate wire, radio, or television communication" any writing, signs, etc., for the purpose of executing any fraudulent scheme or obtaining money by false pretenses.

Should you or your representative be interested in discussing the enclosures with the Commission's staff at its offices in Washington, please advise us. You may be assured that when the Commission has concluded its inquiry into the above matters, it will be pleased to discuss them further with you.

By direction of the Commission:

JOHN C. DOERFER, *Chairman.*

[FCC 57-172, 41503, public notice, Feb. 21, 1957]

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

LIAISON BETWEEN FCC AND FTC RELATING TO FALSE AND MISLEADING RADIO AND TV
ADVERTISING

The Federal Communications Commission has consistently held that the selection and presentation of program material, including advertising, is the re-

sponsibility of the broadcast station licensee, subject to its statutory obligation to operate in the public interest. In fulfilling this obligation, a broadcast station is expected to exercise reasonable care and prudence with respect to advertising copy in order to assure that no material is broadcast which will deceive or mislead the public. It has been the practice of the FCC to advise broadcast stations of complaints received by the FCC concerning instances of deceptive advertising alleged to have been broadcast by particular stations. In following this procedure, the FCC does not attempt to determine the merits of the complaints.

Where a finding has been made by an authoritative body such as the Federal Trade Commission that particular advertising matter is deceptive, the continued broadcasting by station licensees of advertising material found to be deceptive by the FTC would raise serious questions as to whether such stations are operating in the public interest. Accordingly, in order to permit the FCC to apprise broadcast stations of advertising which may be, or has been found to be false and misleading, a cooperative arrangement has been arrived at whereby the FCC will advise the FCC of questionable advertising broadcast over radio and television stations. Thus, where a representation or statement disseminated by radio or television forms the basis or partial basis for the issuance by the FTC of a complaint, an order to cease and desist (including initial decisions) or acceptance of a stipulation, the FCC will be provided with a copy of such documents together with the call letters and locations of the stations which broadcast the questioned representations. The FCC proposes to communicate the above information to the stations involved in order that such stations may be fully informed in the matters and be in a position to consider taking action consistent with their operation in the public interest.

Consistent with the above, licensees should not rely solely on the action or inaction of the Federal Trade Commission, nor should they suspend their own continuing efforts in determining the suitability of advertising material to be broadcast over their facilities. Thus, advertising similar to that found to have been deceptive should raise questions on the part of broadcast stations as to the propriety of such material.

EXCERPT FROM COMMUNICATIONS ACT OF 1934, AS AMENDED

SEC. 326. Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech means of radio communication.

TITLE 18, UNITED STATES CODE—CRIME AND CRIMINAL PROCEDURE

SEC. 1343. Fraud by wire, radio, or television.

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than \$1,000 or imprisoned not more than 5 years, or both. Added July 16, 1952, c. 879, section 18(a), 66 Stat. 722, amended July 11, 1956, c. 561, 70 Stat. 523.

Mr. DOERFER. The letter read in part as follows:

At the outset, I wish to state that the Commission appreciates the invitation of the grand jury and that it would not hesitate to be helpful in any matter in which such help is feasible. In the instant case, the matters on which a representative of the Commission would be questioned are those on which he, at this time, would be unable to supply definitive information. At this writing, the Commission has not concluded its own consideration of this matter and has not arrived at determinations which would permit answers by its representative that would be meaningful to the grand jury.

In your letter, you request copies of the Federal laws and the Commission's rules, regulations and procedures relating to radio and TV quiz shows. Neither the Communications Act nor the Commission's rules contain specific references to radio and television quiz shows. It should be noted, however, that under the

provisions of section 326 of the Communications Act of 1934, as amended, a copy of which is enclosed, the Commission is prohibited from exercising the power of censorship over broadcast material by condition or regulation. You may also be interested in the enclosed copy of the Commission's Public Notice (FCC 57-172) of February 21, 1957, entitled "Liaison Between FCC and FTC Relating to False and Misleading Radio and TV Advertising," in which the Commission had occasion to comment on certain deceptive or misleading broadcast material. There is also enclosed a copy of title 18, United States Code, section 1343, making it a criminal offense to transmit by interstate wire, radio, or television communication any writing, signs, et cetera, for the purpose of executing any fraudulent scheme or obtaining money by false pretenses.

That concludes the prepared statement, Mr. Chairman.

I suggest that the Commission considered first of all the legal elements which make up fraud—

The CHAIRMAN. I am sorry that I did not hear you.

Mr. DOERFER. I would suggest that this committee consider the legal elements which make up the fraud and some of the court cases in which the Commission in somewhat similar cases, where the basis was fraud or deception or violation of the gambling laws, has had some difficulty and were given a good deal of consideration as to the extent of its powers.

The CHAIRMAN. Did that conclude your statement on the problem?

Mr. DOERFER. Yes, it does.

The CHAIRMAN. Of course, I refer again to the letter which is in part of the record from you on behalf of the Commission, under date of September 16, in which you outline or describe the Commission's authority as interpreted by the Commission under the Federal Communications Act.

Mr. Lishman, do you have any questions?

Mr. LISHMAN. Yes, Mr. Chairman.

Chairman Doerfer, before getting down to the specific questions concerning the rigged TV shows, I think it is important for the record to go into some general matters.

I know you will agree that your Commission is trustee of one of the Nation's greatest resources, broadcasting waves available for private broadcasting which, if properly used, can be of the utmost value for the education, entertainment, and enlightenment of all our citizens; is that correct?

Mr. DOERFER. I agree with your observation.

Mr. LISHMAN. Would you please state for the record what you understand is the primary responsibility of the Commission in administering its trusteeship of this great national resource?

Mr. DOERFER. I think the primary responsibility is to carry out those provisions of the Federal Communications Act which give specific direction to the Commission. I think that the section of the statute which requires that the Commission make an efficient and equitable distribution of the radio frequencies amongst the several communities and States and to provide, in so doing for the public interest, probably is as general a statement as I can make.

Mr. LISHMAN. Is it not a fact that the licensing of broadcast stations is required because there are not enough channels to permit broadcasting by all who desire to do so?

Mr. DOERFER. I think that statement is substantially correct. But there is perhaps a bigger reason.

The licensing of channels is to provide for an orderly distribution of a media which, if not distributed with some safeguards, would probably cause interminable interference and destroy the mass media of communication.

Mr. LISHMAN. Isn't it also a fact that because of the physical limitations of the spectrum, it is necessary that a selection be made of a limited number of persons or corporations who shall be permitted to broadcast?

Mr. DOERFER. Yes.

I think when the channels are available, and there is more than one applicant, that a selection must be made. Other than that, any applicant who meets the specifications of the statutory provisions with respect to financial ability, technical know-how, character and legal qualifications—he must be a citizen—when they meet those tests and do not violate certain vested rules of the Commission with respect to multiple ownership or monopoly, we issue license.

I refer to section 308(b).

Mr. LISHMAN. Is it not a fact that this process of selection means that many applicants will necessarily be denied the right to operate broadcasting facilities?

Mr. DOERFER. Yes, I think that they can and are denied.

Mr. LISHMAN. Isn't it a further fact that the rights granted to the selected applicants have a very great monetary value?

Mr. DOERFER. Not always. In many cases the answer is "Yes."

Mr. LISHMAN. In the case of the television broadcasting stations, would that be true?

Mr. DOERFER. My statement is true, that there are many—not many—there are television broadcasting stations which are not profitable and which have been abandoned.

Mr. LISHMAN. Is it true that the stations on national networks have great monetary value?

Mr. DOERFER. In general, that is a correct statement, Mr. Lishman. Although it is quite possible for some television stations to be on a network and still be struggling for survival.

Mr. LISHMAN. Isn't it true that last year we received testimony that approximately \$13 million was paid for one such station?

Mr. DOERFER. You are talking about one individual station. I thought your question was with respect to any station which was affiliated or connected with a network.

Mr. LISHMAN. It was in general terms. Isn't it a fact that a broadcasting license of a television station generally has great monetary value? I am not asking for exceptions.

Mr. DOERFER. I would say "Yes," generally, if it is in a good market.

Mr. LISHMAN. Isn't it true that the applicants obtain this valuable right without paying a cent for it?

Mr. DOERFER. There is no monetary value in applying for a license.

Mr. LISHMAN. In accepting the applicant to whom this valuable privilege is given, doesn't the statute require you to determine who will best serve the public interest and necessity?

Mr. DOERFER. I don't know whether it is phrased just that way.

Mr. LISHMAN. Is that the general effect of the criteria? Is that in general the criteria you use in awarding a television license?

Mr. DOERFER. May I just check the reading of the law?

Mr. LISHMAN. Yes.

Mr. DOERFER. Section 307 (a)—

the Commission, if public convenience, interest or necessity will be served thereby, subject to the limitations of the act, shall grant to the applicant thereof the station provided for by this act.

The other paragraphs follow.

I would like to say this, Mr. Lishman: I think it is a misconception to say that the duty of the Commission is to find the best possible operator of a broadcast station.

What we do is, if there is no contest, we give it to any applicant who meets these minimum qualifications. If there is a contest, we attempt to select the better of the contestants.

I cannot say that we ever in either case find the best possible operator.

Mr. LISHMAN. I appreciate that answer, Mr. Chairman.

Doesn't the person who is awarded this valuable privilege, a license, have some affirmative obligation to serve the public interest, convenience and necessity?

Mr. DOERFER. Yes.

Mr. LISHMAN. Isn't this true, that this is an obligation which the licensee cannot delegate or contract away by entering into contracts with anyone else?

Mr. DOERFER. Yes.

Mr. LISHMAN. Including contracts with producers?

Mr. DOERFER. Yes. I quite agree.

Mr. LISHMAN. Isn't the licensee responsible for everything that is broadcast from the station he is licensed to operate?

Mr. DOERFER. Yes, he cannot escape liability on the grounds of delegation.

Mr. LISHMAN. What is the maximum duration of a broadcast license that the FCC is authorized to issue?

Mr. DOERFER. Three years.

Mr. LISHMAN. In deciding whether to renew a license, does the Commission determine that its renewal will serve public interest, convenience and necessity?

Mr. DOERFER. It does.

Mr. LISHMAN. In making this determination as to the future, do you feel that the Commission is obliged to take into account the licensee's performance in the past?

Mr. DOERFER. Yes, it does, with some limitations.

Mr. LISHMAN. What procedure do you follow in evaluating the past performance of an application for renewal of a license?

Mr. DOERFER. We first of all require the licensee to submit a report of the programming that he has done over the past 3 years. We also take into consideration any substantiated complaints against the licensee.

Mr. LISHMAN. Does the Commission make any independent investigation concerning the accuracy of the contents of the renewal application?

Mr. DOERFER. Not unless there is cause to doubt the accuracy of the information submitted or something to alert it and arouse its suspicions.

Mr. LISHMAN. Could you explain briefly the functions of the FCC renewal section in considering applications for renewal of a license?

Mr. DOERFER. The renewal section receives the program reports—could get the correct title of that report for the record—the correct title is called Program Analysis, Section 4.

I would suggest that this committee be furnished a copy of the format of this report.

I might say that it is more of a statistical analysis of the type of programing and the amount of time which the broadcaster has devoted to different categories.

For illustration, the amount of time which he has devoted to entertainment, news, agriculture, education. Then there is another revision—not a revision—it is cast in another form, and that is the amount of network programing and local live programing, and of course, the spot announcement, and the amount of commercial time.

Mr. LISHMAN. As I understand your testimony, Mr. Chairman, it is that when you are considering renewal of a license you do take into account the character and the quality of the program offered in the past by the applicant.

Mr. DOERFER. I don't think that is a correct statement.

Mr. LISHMAN. It is not?

Mr. DOERFER. It would be physically impossible to do so if I understand your question correctly.

I know of no way that a staff could appraise the character of the program without a full discussion of it, a narrative discussion of what it purports to be.

Mr. LISHMAN. You understand the purpose of my question?

Mr. DOERFER. I understand.

I am quite anxious that this committee, and that the public, understand that the Commission does not monitor any program for the sole purpose of monitoring. We do where there are some complaints and generally, of course, if there is any question of electrical interference. But we have no monitors.

May I give an estimate which is pretty correct with respect to the amount of programing that goes on? There are 60,000 hours of programing every single day in this country.

I cannot visualize how this Commission could staff itself to monitor even a fraction of it, nor can I make any suggestion whereby we could draw standards to give the staff so that they could evaluate these programs.

Mr. LISHMAN. Then am I correct in understanding your answer to be, because of the magnitude of the situation that it would be physically impossible for the Commission to determine the character and quality of the programs that have been offered by an applicant for renewal?

Mr. DOERFER. Not only the magnitude.

I assume that a certain amount of test checking would be ample. The difficulty is in trying to pin down and to work a formula for staff production, these elusive evaluations of what constitutes good programing, plus the fact that there are specific directions not only in the Constitution, but in the FCC Act, which proscribes the Commission from censoring any program or interfering with free speech.

The courts have held that the same standards, the same law which applies or which gives protection under the first amendment to the production of dramatic expression, novels, movies, apply to radio and

television. So we do have a very narrow area within which to work, considering the American people's passion for freedom of speech, even though a good deal of it many times is unacceptable and sometimes, as you know, rather ribald.

Mr. LISHMAN. I certainly agree with you that there should be no censorship and the freedom of speech should be perpetuated. But later on I intend to ask you some questions as to what you believe the duties and responsibilities of the Commission are when there is proof that the stations have been used for the purpose of deceiving the viewing public on the scale that they were deceived in these TV quiz programs.

I don't want to debate with you, Mr. Chairman, but, in my opinion, taking steps to prevent deceiving the viewing public has no connection with the question of censorship. But we will come to that later.

Do you believe it is compatible with public interest, convenience, and necessity for a broadcaster to offer programs which deceive the public?

Mr. DOERFER. I do not.

Mr. LISHMAN. Does the power conferred on the Commission by section 303(1) to make regulations, to carry out the purposes of the act, authorize it to issue regulations requiring licenses to take steps to prevent deception of the public?

Mr. DOERFER. I think that the statute is sufficiently broad to permit us to draft some rules. To what extent this Commission can draft effective rules which would stand the test of court challenge is, as you know, under consideration in our network study program and has been for some time. We have not completed it, as you know, especially the programing aspect.

Mr. LISHMAN. Apart from the correspondence that you have referred to in your statement with the CBS and NBC networks and with the district attorney of New York County, would you please state what independent investigation was made by the Commission with respect to the rigged TV quiz shows?

Mr. DOERFER. You mean in addition to what was indicated in the statement?

Mr. LISHMAN. Yes.

Mr. DOERFER. Just a moment. I will have to talk to some of the staff people who were in on that investigation.

Mr. Lishman, may I suggest that there is available the testimony which was taken by our staff in August of 1958 with respect to just how this entire program for television works, the part that the package producers, the advertising agencies, the sponsors and the networks themselves have.

That is a substantial job. It was in progress at the time of the TV quiz expose and it is still in progress. It is a very voluminous and complicated procedure.

Mr. LISHMAN. Mr. Chairman, according to your previous testimony, the Commission first became aware that there was a deceptive or fraudulent practice or incident on a TV quiz program on July 31, 1958. That was the date you first became aware of the situation, is that correct?

Mr. DOERFER. That was the date that the Hilgemeier affidavit came to the attention of the Commission, and to my knowledge it was the

first time that the Commission was aware of any deceptive practices in the quiz program.

Mr. LISHMAN. Did the Commission ever suspect, prior to that time, that these programs might be fixed?

Mr. DOERFER. I can't answer for the other commissioners. I never did.

Mr. LISHMAN. I would like to direct your attention to the Commission's rules regarding announcements of mechanical reproduction of programs. Could you explain the statutory authority for such regulation?

Mr. DOERFER. May I consult with my staff with respect to the rule itself?

Mr. LISHMAN. I can give you the reference to the docket, if that is any help.

Mr. DOERFER. Yes, would you do that, please?

Mr. LISHMAN. The docket is 11546 in 1956 in connection with amendment of regulations concerning announcements of mechanical reproduction.

Mr. DOERFER. I think we could shorten this if I offered a witness here who knows the details and the history of this. I think he could give you very accurate answers on this.

May I suggest that Mr. Nelson be sworn?

Mr. LISHMAN. I think this is important, Mr. Chairman, because we have a situation where on the one hand section 326 prohibits censorship, yet on the other hand we have a situation where the Commission itself has on occasion issued rules and regulations which do require a certain degree of program control in the public interest.

I would just like to have this clear on the record.

Mr. DOERFER. We do have statutory authority with respect to the mechanical production of programing.

At one time there was quite a strong feeling that we should not even be permitted to reproduce phonograph records.

Mr. LISHMAN. In order to clarify this entire matter, what kind of announcements did the Commission require should be made when mechanical reproductions were being used on a broadcast?

Mr. DOERFER. They required an identification of that procedure or method.

Mr. LISHMAN. In advance of the actual use of the mechanical reproduction?

Mr. DOERFER. Yes, it was in advance.

Mr. LISHMAN. Did you regard that regulation as being compatible with section 326 which prohibits censorship?

Mr. DOERFER. I don't know whether that was taken into consideration. To the extent that controls have mechanics, I can see conflict.

If the rule is used to censor or direct or influence the character of programing, I can see a direct conflict.

The CHAIRMAN. It seems to me that you referred to a particular regulation which apparently is somewhat lengthy according to the memorandum that I saw. There have been bits of reference to it and a suggestion that Mr. Nelson be permitted to describe the background.

Do you want that done for the record now, Mr. Lishman? We want to develop the entire facts.

Mr. DOERFER. Mr. Chairman, we are just not prepared on this. This comes as a complete surprise to me. It seems to be a rule which the Commission adopted many years ago. I am advised that the musicians union and Petrillo had persuaded the Commission and some Members of Congress. Many years ago this rule was adopted and what we are talking about now is an amendment in 1956 where it was relaxed.

Isn't that what you are talking about?

Mr. LISHMAN. That is correct.

I was wondering whether you could exercise the power of censorship in favor of a union but not in favor of the innocent viewing public.

Mr. DOERFER. I don't think that follows.

Mr. LISHMAN. I am drawing that as the underlying principle here.

Mr. DOERFER. Let me say this: I think your observation may have some substance. I think that the Commission originally did start out with the idea that it did have a good deal of power over programing. But as the law developed and as other viewpoints were presented, there has been a good deal of doubt. There still is.

As you know, one commissioner feels absolutely that you just can't come anywhere near regulating programing. He has a rather expansive view of the word "censorship". That is not settled.

The CHAIRMAN. If you are going to something else, I am still not satisfied with what you have been talking about. You have been going all around the lot.

If there has been an erosion in either the regulation or the law that authorized it during a period of time, I think the record ought to show it. I think it would be probably more informative to describe just what you have there.

Mr. DOERFER. I think so, too.

Mr. LISHMAN. Whether or not the same situation still exists?

Mr. DOERFER. I don't know what the rule was. I haven't had time to study what the amendment is.

Mr. LISHMAN. Pardon?

Mr. DOERFER. I said I do not know what the rule was and I have not had time to study this. I would be happy to submit a statement.

The CHAIRMAN. I was going to suggest that would be one way to do it.

When was this rule promulgated?

Mr. DOERFER. They tell me they don't know. The old rule is way back in the 1930's. This amendment was in 1956. It liberalizes that rule.

The CHAIRMAN. In other words, the rule referred to by Mr. Lishman was one that was adopted way back in the early days of the Communications Act in 1934?

Mr. DOERFER. That is right.

The CHAIRMAN. Now what you have in your hand is something that modified that principle which was a rule in 1956?

Mr. DOERFER. It was a rule.

The CHAIRMAN. I think probably you better submit a statement on it so we will have a complete record on it.

Mr. DOERFER. I think that would be advisable.

(Statement referred to follows:)

HISTORY OF THE FCC RULES REQUIRING ANNOUNCEMENT OF THE USE OF MECHANICAL REPRODUCTIONS ON BROADCAST PROGRAMS

The current rule (as amended in 1956) requiring an announcement stating that a mechanically reproduced program is being used on the air reads as follows:

MECHANICAL REPRODUCTIONS

"(a) No mechanically reproduced program consisting of a speech, news event, news commentator, forum, panel discussion, or special event in which the element of time is of special significance, or any other program in which the element of time is of special significance and presentation of which would create, either intentionally or otherwise, the impression or belief on the part of the listening audience that the event or program being broadcast is in fact occurring simultaneously with the broadcast, shall be broadcast without an appropriate announcement being made either at the beginning or end of such reproduction or at the beginning or end of the program in which such reproduction is used that it is a mechanical reproduction or a mechanically reproduced program: *Provided, however*, That each such program of one minute or less need not be announced as such.

"(b) The exact form of identifying announcement is not prescribed, but the language shall be clear and in terms commonly used and understood. Any other program mechanically reproduced or series of mechanical reproduction, including a mechanical reproduction used for background music, sound effects, station identification, program identification (theme music of short duration) or identification of sponsorship of the program proper, need not be announced as provided in paragraph (a) of this section, but the licensee shall not attempt affirmatively to create the impression that any program being broadcast by mechanical reproduction consists of live talent.

"(c) The requirements of paragraph (a) of this section are waived with respect to network programs, transcribed and rebroadcast at a later hour because of the time zone differentials between the place where the program originates and where it is rebroadcast, this waiver being applicable whether the off-the-line recording is made by the network itself at one of its key stations or by an individual station, but only when the off-the-line recording is for broadcast at an hour not exceeding the time zone differential between the place where the program originates and where it is rebroadcast. Each station which broadcasts network programs at a later hour in accordance with this waiver shall make an appropriate announcement at least once each day between the hours of 10:00 a.m. and 10:00 p.m., stating that some or all of the network programs which are broadcast by that station are delayed broadcasts by means of transcription. This waiver provision also applies during the annual periods in which daylight saving time will be effective with respect to network programs transcribed and rebroadcast one hour later because of the time differential resulting from the adoption of daylight saving time in some areas."

The language of this rule is identical for the standard (Sec. 3.118), frequency modulation (Sec. 3.288) and non-commercial FM (Sec. 3.588) bands. The rule applicable to television broadcasting (Sec. 3.653) covers programs both "visual and aural."¹

The rule now in force is the product of a long evolution that began at the inception of radio broadcasting.

A. HISTORY OF THE RULE PRIOR TO THE ESTABLISHMENT OF THE FCC

1. Rules prior to the Radio Commission

The first act of Congress concerning radio communications lodged jurisdiction over such matters in the Secretary of Commerce and Labor.² The Department of

¹ These rules are published in 47 C.F.R. under their respective section numbers.

² Public Law No. 262, 61st Cong., approved June 24, 1910, entitled "An Act to require apparatus and operators for radio communication on certain ocean steamers." Section 4: "That the Secretary of Commerce and Labor shall make such regulations as may be necessary to secure the proper execution of this act by collectors of customs and other officers of the Government." Also see Radio Act of 1912, Public Law No. 264, 62d Cong., 37 Stat. 302.

Commerce and Labor was later separated according to its two distinct functions and, by 1914, it was the Radio Service, Bureau of Navigation, Department of Commerce that published "Regulations Governing Ship and Land Radio Stations."

At that time there were seven classes of stations:

- Class 1—Public service stations (general and limited)
- Class 2—Limited commercial stations
- Class 3—Experiment stations
- Class 4—Technical and training-school stations
- Class 5—Special amateur stations
- Class 6—General amateur stations
- Class 7—Restricted amateur stations

At the classification itself indicates, only class 2 stations performed currently recognized broadcasting functions. Since these stations were the predecessors of the present day broadcast stations, it is important to understand what their functions were at that time. Rule 57 of the Radio Laws and Regulations read:³

"Class 2—Limited commercial stations are not open to public service and are licensed for a specific commercial service or services defined in the license. Stations of this class must not transmit to or accept public messages from other stations. No rates are authorized."

It should be noted that strict control over the content of the messages broadcast was exercised first through the classification of the stations by various functions.

Rule 57 was reprinted unchanged in the 1919 edition of the Radio Communications Laws of the United States.⁴

A later amendment to Rule 57 added:⁵

"Licenses of this class are required for all transmitting radio stations used for broadcasting news, concerts, lectures, and such matter. A wave length of 360 meters is authorized for such service, and a wave length of 485 meters is authorized for broadcasting crop reports and weather forecasts, provided the use of such wave lengths does not interfere with ship to shore or ship to ship service."

A further amendment restated the entire rule and further established Class B, radiotelephone broadcasting stations on a third frequency of 400 meters. "The requirements to qualify for this [Class B] category were a minimum power of 500 watts and a maximum power of 1,000 watts, a careful supervision of programs, and the use of mechanically operated musical instruments only in an emergency."⁶ The failure of a Class B station to maintain the standards prescribed for such stations resulted in the forfeiture of its "400 meter privilege", i.e. its license was cancelled and it had to return to the wave length used by ordinary stations. Since the other stations' power was limited to a maximum of 500 watts, this sanction also comprised a reduction of power.

An amendment of October 2, 1922, completely prohibited the use of mechanically operated instruments by Class B stations.⁷ This rule was incorporated, un-

³ Department of Commerce, Bureau of Navigation, Radio Service, Radio Laws and Regulations of the United States (July 27, 1914 ed.) p. 55.

⁴ August 15, 1919 ed., p. 55.

⁵ Department of Commerce, Radio Service Bulletin (No. 57, Jan. 3, 1922) p. 10.

⁶ Regulation of Broadcasting, Study for the Committee on Interstate and Foreign Commerce, House of Representatives, 85th Cong., 2d sess., on H. Res. 99, p. 5.

⁷ Department of Commerce, Radio Service Bulletin (No. 65, Sept. 1, 1922), p. 11 [in part]:

"Service

"Programs: The programs must be carefully supervised and maintained to insure satisfactory service to the public.

"Music: Mechanically operated musical instruments may be used only in an emergency and during intermission periods in regular programs."

⁷ Department of Commerce, Radio Service Bulletin (No. 66, Oct. 2, 1922), p. 8:

"Broadcast Regulations Amended

"The specifications applying to Class B radiotelephone broadcasting stations are amended to read as follows:

"Music: The use of mechanically operated instruments is prohibited.

"D. B. CARSON,
"Commissioner of Navigation.

"Approved:

"HERBERT HOOVER,
"Secretary of Commerce.

changed, in the 1923 reprint of the Amendment to Regulations,⁸ and remained on the books until the establishment of the Federal Radio Commission in 1927.

2. Rules of the Radio Commission

The Act that created the Federal Radio Commission⁹ contained the following provisions that might herein be relevant:

"SEC. 4. Except as otherwise provided in this Act, the commission from time to time, as public convenience, interest, or necessity requires shall—

"(a) Classify radio stations;

"(b) Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class;

"(c) Regulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein;

"(f) Make such regulations not inconsistent with law as it may be necessary to prevent interference between stations and to carry out the provisions of this Act. * * *."

Many, if not all of the above provisions could have been cited by the Radio Commission in the issuance of the subsequent orders concerning the announcement of the use of mechanical reproductions. However, it was not the practice of that Commission to refer to any particular authority in support of its regulations.

Rulemaking proceedings were not customary in those days. Regulatory control over broadcast stations was exercised through so-called general orders, which were issued as the exigencies of the circumstances demanded them. They "have not been published in a pamphlet form, nor has any attempt been made to arrange or codify them"¹⁰ until late 1931.

At its 26th meeting, the Federal Radio Commission issued General Order 16, the first order which provided for the *announcement* of "all broadcasts of music performed through the agency of mechanical reproductions." The Order read as follows:¹¹

FEDERAL RADIO COMMISSION,
Washington, D.C., August 9, 1927.

GENERAL ORDER NO. 16

(Must announce Mechanical Musical Reproduction)

The Federal Radio Commission finds that while the broadcasting of music performed through the agency of mechanical reproductions, such as records or perforated rolls, is not in itself objectionable, the failure clearly to announce the nature of such broadcasting is in some instances working what is in effect, a fraud upon the listening public. The Commission, therefore, hereby orders that effective August 21, 1927, all broadcasts of music performed through the agency of mechanical reproductions shall be clearly announced as such with the announcement of each and every number thus broadcast, and that proved failure to make such announcement shall be deemed by the Commission cause for action under Section 32 of the Radio Act of 1927.

E. O. SYKES,
Vice Chairman.

General Order 16 was superseded by General Order 49, which provided for particular announcements describing the character of the reproducing machine either by the terms "phonograph record" and "mechanical piano player," or "by the term generally used and understood by the public as meaning such

⁸ Department of Commerce, Radio Service Bulletin (No. 73, May 1, 1923), pp. 11-12.

⁹ "September 22, 1922."

¹⁰ Public Law 632, 69th Cong., approved February 23, 1927, 44 Stat. 1162.

¹¹ "General Orders of the Federal Radio Commission," 1 Journal of Radio Law 1 (April 1931).

¹² FRC Minute dated August 5, 1927, vol. 1, p. 117.

mechanical reproduction.”¹² General Order 52, which superseded General Order 49, somewhat relaxed that strict rule, prescribing, however, logging requirements for those who make use of the exception that “where a recording or electrical transcript is made exclusively for broadcasting purposes and is neither offered nor intended to be offered for sale to the public, the words ‘phonograph record’ may be replaced by any such phrase which accurately describes such transcription and which is of such a nature as not to deceive or tend to deceive the public as to the character of the reproduction broadcast.”¹³

In its Second Annual Report, the reasons for issuing such rules were explained as follows:

“By its General Order No. 16, issued on August 9, 1927, the commission, while not condemning the practice of using mechanical reproductions such as phonograph records or perforated rolls, required that all broadcasting of this nature be clearly described in the announcement of each number. The Commission has felt, and still feels, that to permit such broadcasting without appropriate announcement is, in effect, a fraud upon the public. It is true that in the smaller communities which do not have adequate original program resources the use of phonograph records may fill a need: it is true also that there may be developments in specially produced phonograph records which can be made use of to

¹² FRC Minute dated October 26, 1928, vol. 2, p. 122:

RULES AND REGULATIONS

The Commission authorized the issuance of the draft of General Order 49, relative to mechanical reproductions as provided by the General Counsel. (See page 122A.)

Ibid., p. 122A:

FEDERAL RADIO COMMISSION, WASHINGTON, D.C.

General Order No. 49

At a session of the Federal Radio Commission held at its offices in Washington, D.C., on October 26, 1928.

All broadcasting stations shall announce clearly and distinctly the character of all mechanical reproductions broadcast by them, the announcement to precede each such program item. In such announcements each phonograph record used, whatever its character, shall be described as a “phonograph record”; each piano player selection used shall be described as played by “mechanical piano player”; every other mechanical reproduction shall be similarly described by the term generally used and understood by the public as meaning such mechanical reproduction.

FEDERAL RADIO COMMISSION,
By IRA E. ROBINSON, *Chairman*.

CARL H. BUTMAN, *Secretary*.

Attest:
[SEAL]
¹³ FRC Minute No. 20 dated November 27, 1928, vol. 2, p. 171: “On motion duly made and carried, the Commission adopted General Order No. 52, modifying General Order No. 49. (See page 172A.)”

Ibid., p. 172A:

FEDERAL RADIO COMMISSION, WASHINGTON, D.C.

General Order No. 52

At a session of the Federal Radio Commission held at its offices in Washington, D.C., on November 26, 1928.

It is ordered that General Order No. 49 heretofore issued by the Commission on October 26, 1928, be, and the same is hereby, to read as follows:

“All broadcasting stations shall announce clearly and distinctly the character of all mechanical reproductions broadcast by them, the announcement to precede each such program item. In such announcements each phonograph record used, whatever its character, shall be described as a ‘phonograph record’; each piano player selection used shall be described as played by ‘mechanical piano player’; every other mechanical reproduction shall be similarly described by the term generally used and understood by the public as meaning such mechanical reproduction;

“Provided, however, that where a recording or electrical transcript is made exclusively for broadcasting purposes and is neither offered nor intended to be offered for sale to the public, the words ‘phonograph record’ may be replaced by any phrase which accurately describes such transcription and which is of such a nature as not to deceive or tend to deceive the public as to the character of the reproduction broadcast. Every station taking advantage of this proviso shall keep a record of the phrases actually used by such station and shall communicate such phrase to the Commission on request by the Commission.”

FEDERAL RADIO COMMISSION,
By IRA E. ROBINSON, *Chairman*.

CARL H. BUTMAN.

Attest:
[SEAL]

advantage by radio. On the whole, however, the commission is inclined to believe, that the use of ordinary commercial records in a city with ample original program resources is an unnecessary duplication of service otherwise available to the public, and the crowded channels should not be wasted in this manner. General Order No. 49, issued on October 26, 1928, makes more rigid requirements as to announcements of mechanical reproductions."¹⁴

"In view of the paucity of channels, the commission is of the opinion that the limited facilities for broadcasting should not be shared with stations which give the sort of service which is readily available to the public in another form. For example, the public in large cities can easily purchase and use phonograph records of the ordinary commercial type. A station which devotes the main portion of its hours of operation to broadcasting such phonograph records is not giving the public anything which it can not readily have without such a station. If, in addition to this, the station is located in a city where there are large resources in program material, the continued operation of the station means that some other station is being kept out of existence which might put to use such original program material * * *"¹⁵ [explaining the application of the "public interest, convenience or necessity" standard]:

"The Commission also believes that public interest, convenience or necessity will be best served by avoiding too much duplication of programs and types of programs."¹⁶

As to the possibility that the control of programs may interfere with freedom of speech, the Commission stated as follows:

"The commission is unable to see that the guarantee of freedom of speech has anything to do with entertainment programs as such. Since there are only a limited number of channels and since an excessive number of stations desire to broadcast over these channels, the commission believes it is entitled to consider the program service rendered by the various applicants, to compare them, and to favor those which render the best service. If one station is broadcasting commercial phonograph records in a large city where original programs are available and another station is broadcasting original programs, for which it is making a great financial outlay, the commission believes that the second station should be favored and that the question of freedom of speech is not involved."¹⁷

These pronouncements were standards enforced in practice. For example, in explaining the reason for reducing the power of Station WCRW, the Commission stated as follows:¹⁸ "Of the total hours of operation, 75 percent is devoted to the broadcasting of phonograph records, a type of entertainment which the witness referred to as 'electrical production' * * *." General Order No. 52 was amended by General Order No. 78 in 1929. The new Order provided for the use of exact phrases, such as "this is a talking machine record," when announcing that a mechanically reproduced program would follow, and in case the recording or transcript was made exclusively for broadcasting purposes, it had to be announced as such. Each program unit had to be announced separately in advance, or at least every 15 minutes if it was a longer recording."¹⁹

¹⁴ Federal Radio Commission, Second Annual Report, p. 19.

¹⁵ *Ibid.*, p. 155.

¹⁶ *Ibid.*, p. 168.

¹⁷ *Ibid.*, p. 161.

¹⁸ *Ibid.*, p. 156. Cf. discussion concerning classification of stations on p. 4, *supra*.

¹⁹ FRC Minute No. 147, dated December 5, 1929, vol. 4, pp. 36-37:

FEDERAL RADIO COMMISSION, WASHINGTON, D.C.

General Order No. 78

At a session of the Federal Radio Commission held at its offices in Washington, D.C., December 5, 1929.

It is ordered That General Order No. 52, be and the same is hereby, amended to read as follows:

I. ORDINARY PHONOGRAPH RECORDS, MECHANICAL PIANO PLAYERS, ETC.

All broadcasting stations shall announce clearly and distinctly the character of all mechanical reproductions broadcast by them, the announcement to immediately precede the broadcasting of each record. In such announcements each talking machine, phonograph or graphophone record used, whatever its character, shall be described by the use of the exact words: "This is a talking machine record"; "This is a phonograph record"; or "This is a graphophone record"; each player piano selection used shall be described as played by "mechanical piano player"; every other mechanical reproduction shall be similarly described by the term generally understood and used by the public and meaning such mechanical reproduction.

On November 7, 1931, the Federal Radio Commission held a special meeting at which time it considered the adoption of the first Commission Rules and Regulations. Commissioner Robinson submitted a draft amendment of General Order 78 and moved that Paragraph 176 concerning mechanical reproduction be deleted and his draft be inserted in lieu thereof. The proposed rule included all the stringent and detailed provisions of each previous order concerning the announcement of recorded programs. Commissioner Robinson's motion, and all of his subsequent motions for the amendment of Paragraph 176, were lost.²⁰ Effective February 1, 1932, Rule 176, as newly adopted, read as follows:

"A mechanical reproduction shall be announced as such just before it is broadcast, except when its use is merely incidental, as for identification or background. The exact form of announcement is not prescribed but the language shall be clear and in terms commonly used and understood. The following are examples of statements sufficient for the purpose:

"a. 'This is a mechanical reproduction.'

"b. 'This is a player-piano record.'"

World Broadcasting System, Incorporated, producer and distributor of electrical transcriptions made exclusively for the use of broadcast stations, petitioned for the amendment of Paragraph 176 of the Rules three months after its adoption. The petition was denied.²¹

In a memorandum to the Commission, dated May 14, 1932, the General Counsel and the Chief Engineer proposed the amendment of Paragraph 176 so as not to require the announcement of every single record when a combination of several records was blended into one continuous program. It was felt that if the assorted excerpts from the separate records were first retranscribed on one disc, no separate announcements would be required by the rule, however, playing of the original discs produced transcriptions of a superior quality while separate announcements destroyed the continuity of the program and served only to irritate the public. It was also considered desirable to distinguish between electrical transcriptions made exclusively for broadcast purposes and all other mechanical reproductions. The rule was amended, therefore, effective June 1, 1932, by adding to it the following paragraph:²²

"In all cases where electrical transcriptions made exclusively for broadcast purposes are so constructed as to record a single continuous program upon more than one mechanical reproduction, rather than a recordation of the entire program upon a single mechanical reproduction, the announcement required hereby shall be made at the commencement of each such program and in no event less than every fifteen minutes. All other announcements required hereby shall immediately precede the use of each separate mechanical reproduction."

Paragraph 176 remained unchanged in the reprint authorized on October 3, 1933.

B. HISTORY OF THE RULES AFTER THE ESTABLISHMENT OF THE FCC

At the first meeting of the Federal Communications Commission on July 11, 1934, the new Commission referred to section 604(a) and (b) of the Federal Communications Act, and adopted all the rules of the Federal Radio Commission.

II. EXCLUSIVE TRANSCRIPTIONS FOR BROADCAST PURPOSES

Where a recording or transcript is made exclusively for broadcasting purposes and is neither offered nor intended to be offered for sale to the public, each such recording shall be immediately preceded and followed by the following statement: "This program is an electrical transcription made exclusively for broadcast purposes."

Broadcasting stations shall not use such records, transcriptions, or piano player rolls when the length of the rendition thereof exceeds fifteen minutes unless provision is made for the announcement of the station call letters which must be given together with the statement above set forth at least once every fifteen minutes.

FEDERAL RADIO COMMISSION,
By IRA E. ROBINSON, *Chairman*.

²⁰ FRC Special Minute No. 458-A, dated November 7, 1931.

²¹ FRC Minute No. 548, dated May 10, 1932, vol. 14, p. 5779.

MISCELLANEOUS

On recommendation of the General Counsel, the Commission denied the petition of the World Broadcasting System, Incorporated, requesting an amendment of paragraph 176 of the Rules and Regulations of the Commission. [No indication in record what kind of an amendment was desired.]

²² FRC Minute No. 551, dated May 17, 1932, vol. 14, pp. 5843-5844.

Rule 176, providing for the announcement of the use of mechanical reproductions, remained unchanged until the conclusion of the rulemaking type hearing in Docket No. 2955. The brief history of that hearing is as follows:

In October of 1934, World Broadcasting System, Inc., filed a petition for the amendment or clarification of Paragraph 176 of the Rules and Regulations. In its petition, World Broadcasting System explained that it was the producer and distributor of a "Daily Program Service." At the installation of that Service, a broadcasting station was furnished with numbered record library units, and the announcer, who combined the various records with certain appropriate introductory remarks, also furnished by the Service to make one continuous program, selected these records by their number in the sequence prescribed by the Service. World Broadcasting argued that the sole purpose of any regulation with regard to the announcement of mechanical reproductions was to prevent misrepresentation as to the character of the presentation. Therefore, since the nature of the daily program service furnished was, in itself, an indication that this was a transcribed program, the reason for the rule was not violated and did not justify the repetitious, unpleasant breaks caused by the required announcements. Petitioner further pointed out that since most of his customers were stations which used "phonograph-records-and-announcements" type programs before they became subscribers for the Service, if the program service were to be interrupted by repetitious announcements required by the rule, some of the subscribers might revert to their previous undesirable programming policy. The General Counsel urged the issuance of a statement clarifying Rule 176²³ and later, in 1935, the Assistant General Counsel submitted a draft order granting the petition and amending Rule 176.²⁴ After considering the comments of all interested parties, and despite the opposition of the American Federation of Musicians, the Commission adopted the order which amended Rule 176 effective January 28, 1936, to read as follows:

"176. Each broadcast program consisting of a mechanical reproduction, or a series of mechanical reproductions, shall be announced in the manner and to the extent set out below:

"1. A mechanical reproduction, or a series thereof, of longer duration than fifteen minutes, shall be identified by appropriate announcements at the beginning of the program, at each fifteen minute interval, and at the conclusion of the program; provided, however, that the identifying announcement at each fifteen minute interval is waived in case of a mechanical reproduction consisting of a single, continuous, uninterrupted speech, play, symphony concert or operatic production of longer duration than fifteen minutes;

"2. A mechanical reproduction, or a series thereof, of a longer duration than five minutes and not in excess of fifteen minutes, shall be identified by an appropriate announcement at the beginning and end of the program;

"3. A single mechanical reproduction of a duration not in excess of five minutes, shall be identified by appropriate announcement immediately preceding the use thereof;

"4. In case a mechanical reproduction is used for background music, sound effects, station identification, program identification (theme music of short duration), or identification of the sponsorship of the program proper, no announcement of the mechanical reproduction is required;

"5. The exact form of the identifying announcement is not prescribed but the language shall be clear and in terms commonly used and understood by the listening public. The use of the applicable identifying words such as 'a record,' 'a recording,' 'a recorded program,' 'a mechanical reproduction,' 'a transcription,' 'an electrical transcription,' will be considered sufficient to meet the requirements hereof. The identifying words shall accurately describe the type of mechanical reproduction used, i.e. where a transcription is used it shall be announced as a 'transcription' or an 'electrical transcription' and where a phonograph record is used it shall be announced as a 'record' or a 'recording.'"

²³ "Memorandum to the Broadcast Division (Through Commissioner Gary)," dated September 21, 1934. (Docket No. 2955.)

²⁴ "Memorandum to the Broadcast Division via Committee on Rules," dated December 13, 1934. (Docket No. 2955.)

The above rule was published in the first edition of the Code of Federal Regulations as Section 3.155²⁵ with the only difference being that the numbered paragraphs were therein identified by letters (a) to (e). The authority cited there was Section 4(i)²⁶ of the Communications Act. On June 23, 1939, the Commission repealed its Rule 176 and proposed Rule 34.23 as a substitute. This was ultimately adopted as Rule 3.93.²⁷ The new rule differed from the old one only in the wording of some phrases; i.e. "mechanical reproduction" was described in the new rule as "mechanical record."

In a memorandum to the Commission, dated November 22, 1939, the General Counsel, Chief Accountant, Chief Engineer and Secretary of the Commission stated as follows: "The provisions of Section 3.93 of the Standard Broadcast Rules have given rise to an unsatisfactory situation in view of the requirement for an announcement of each 15 minutes that the program is a mechanical record, which announcement necessitates interrupting the recording date of a program received by wire facilities and broadcast at a later hour. These programs are often for half-hour periods and to interrupt them to announce that the program is a mechanical record would, in some cases, involve disrupting the entertainment continuity, and any announcement made might be quite out of line with good programing. To avoid the situation, and to relax to some extent the necessity to announce a mechanical record, the Rules Committee suggests that the requirement of announcements be changed from each 15-minute interval to each 30-minute interval and that the basis for waiver of the identifying announcement of each 30-minute interval be exactly the same as that accepted for waiving station announcements on the hour and halfhour." The proposed amendment was adopted on January 4, 1940,²⁸ providing for announcements every 30 minutes instead of every 15 minutes and also exempting religious services from the requirements of the rule. Subparagraph (e) was further changed in February 1949, to read²⁹

"(e) The identifying announcement shall accurately describe the type of the mechanical record used, i.e., where an electrical transcription is used it shall be announced as a 'transcription' or an 'electrical transcription,' or as 'transcribed' or 'electrically transcribed,' and where a phonograph record is used it shall be announced as a 'record.'"

This rule was later renumbered as Rule 3.407.³⁰

In 1942 the Commission issued Restricted Order 2-A suspending the operation of Section 3.407 for recorded air raid warnings only, "it appearing that the reason for Section 3.407 is to advise the listening public that it is listening to a mechanical reproduction of live talent, and not to live talent * * *."³¹

On May 16, 1944, the Commission adopted Order No. 120 announcing that in its opinion the public interest, convenience, and necessity may be served by amending Section 3.407 of the Rules and Regulations so as to read as follows:

"Par. 3.407 *Mechanical Records*. (a) No recorded program consisting of a speech, news event, news commentator, forum, panel discussion, special event, or any other recorded program in which the element of time is of special significance and the presentation of which would create, whether intentionally or otherwise, the impression or belief on the part of the radio audience that the event or program being broadcast is, in effect, occurring simultaneously with the broadcast, shall be broadcast without an appropriate announcement being made at the beginning and conclusion of the broadcast that it is a recorded program. The identifying announcement shall accurately describe the type of mechanical record used.

"(b) Any other program consisting of a mechanical record, or a series of mechanical records need not be announced as provided in subsection (a) but the licensee shall not attempt to affirmatively create the impression that the

²⁵ 47 CFR 3.155 (1st ed., June 1, 1938).

²⁶ "The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions."

²⁷ FCC Minute No. 291-39 (Docket No. 5072-A), dated June 23, 1939, effective August 1, 1939.

²⁸ FCC Minute No. 5-40, dated January 4, 1940 (Amendment No. 2), published January 9, 1940, 5 F.R. 112.

²⁹ FCC Minute No. 106-40, dated February 29, 1940 (Amendment No. 8), published March 5, 1940, 5 F.R. 933.

³⁰ FCC Minute No. 410-40, dated June 21, 1940, published June 26, 1940, 5 F.R. 2382.

³¹ FCC Minute No. 498-42, dated December 8, 1942 (not published).

program being so broadcast consists of live talent. At least one each hour the licensee shall announce which of the programs other than those specified in subsection (a), presented during the previous hour, were broadcast by means of mechanical record."

This rulemaking proceeding was assigned Docket No. 6600. Seven statements had been filed by interested parties; none requested oral argument. The Acting General Counsel recommended that "Order 120 should be revised so as to include the provision that mechanically recorded programs refer to Subsection (a), which are of one-minute duration or less be required to be announced as such only at the beginning; that the hourly round-up required under subsection (b) as proposed by Order 120 should be omitted because it would serve no useful purpose since it appears that the public rarely stays on one frequency for as long as an hour; such a roundup at the end of an hour would probably be lengthy, confusing and boring to the public and would require, in many instances, a repetition of the name of the sponsor in order to identify the transcription or other mechanical recording." Instead of adopting the entire Order, Section 3.407 of the Rules and Regulations was amended by adding subsection (f) which read as follows: "A licensee shall not attempt affirmatively to create the impression that any program being broadcast by mechanical reproduction consists of live talent."³²

At a Commission meeting held on July 3, 1945, the Rules Committee suggested the amendment of Rule 3.407 in order to further relax the rule concerning the announcement of mechanical reproductions. The reasons urged for the amendment were as follows:

"2. In the case of a 'participating' type of program consisting of various mechanical reproductions—transcriptions or photograph records—interspersed with live commercial announcements, these sections have been interpreted to mean that an identification announcement of the mechanical reproduction is required whenever a commercial 'plug' intervenes between the playing of two mechanical reproductions—it being considered that the interposition of the 'plug' prevents the records from being considered a 'series.' The case of a sponsored program which consists of transcribed or recorded music or several live commercials by an individual sponsor has been treated the same way. It has become common for stations to make the mechanical record announcement at the beginning and end of 15-minute 'participating' programs where a number of phonograph records are interspersed with fifteen or twenty 'spot' announcements, and at a recent meeting in Washington of inspectors all over the United States, it was reported to the Chief of the Field Division that Section 3.407 (a) (b) of the Rules and Regulations, as presently constituted and interpreted, has resulted in bad programming and has proved extremely difficult of enforcement; that this section appears to be misunderstood, if not deliberately violated, by practically every station in the United States. It was the consensus of the inspectors, in which the Rules Committee agrees, that Subsections (a) and (b), as interpreted by the Commission, is too restrictive and that the announcement of such programs pursuant to that interpretation results in lessening to listening enjoyment value of the program.

"3. The attached proposed amendment will eliminate the use of the word 'series' in the beginning of the rule, and in subsections (a) and (b) thereof, and with it the interpretation that a 'series' is interrupted whenever the playing of mechanical reproductions is interspersed with live talent (commercial announcements) in so-called participating types of programs, therefore making it unnecessary in such cases for the licensee to announce each record, as such, before and after playing.

"4. The Inspectors were also of the opinion that subsection (e) of Section 3.407 is too restrictive insofar as it limits the type of announcement to be made where a phonograph record is used, namely, as a 'record,' whereas a choice of announcement is given wherein 'electrical transcription' is used. It is believed that better programing would result with more effective enforcement if the rule were amended so as not to require the specific identification announcement, but rather permit the licensee to use any language which is clear and in terms commonly used and understood. It is further believed that if this provision were combined with the present provision of subsection (f) to the effect that a licensee shall not affirmatively attempt to create the impression that any program being broadcast by mechanical reproduction consists of live talent, it would adequately

³² FCC Minute No. 366-44, dated August 15, 1944 (Amendment No. 245) (Docket No. 6600).

protect the public and at the same time allow a little more leeway to licensees in arranging programs and making them more agreeable to the listening audience."

Section 3.407 of the Rules and Regulations as amended, read as follows:³³

"3.407 *Mechanical record.* Each program broadcast which consists in whole or in part of one or more mechanical reproductions shall be announced in the manner and to the extent set out below:

"(a) Each such program of longer duration than 30 minutes, consisting in whole or in part of one or more mechanical reproductions, shall be identified by appropriate announcement at the beginning of the program, at each 30-minute interval and at the conclusion of the program: *Provided, however.* That the identifying announcement of each 30-minute interval is not required in each of a mechanical record consisting of a continuous uninterrupted speech, play, religious service, symphony concert or operatic production of longer than 30 minutes.

"(b) Each such program of a longer duration than 5 minutes and not in excess of 30 minutes, consisting in whole or in part of one or more mechanical reproduction, shall be identified by an appropriate announcement at the beginning and end of the program.

"(c) Each such program of 5 minutes or less, consisting in whole or in part of mechanical reproductions, shall be identified by appropriate announcement immediately preceding the use thereof.

"(d) In case a mechanical record is used for background music, sound effects, station identification, program proper, no announcement of the mechanical record is required.

"(e) The exact form of identifying announcements is not prescribed, but the language shall be clear and in terms commonly used and understood. The licensee shall not attempt affirmatively to create the impression that any program being broadcast by mechanical reproduction consists of live talent."

Thus, the rigid form of announcements was relaxed and the broadcasters were given more discretion in the way they could discharge their duty not to create a false impression as to the character of the program. By a later amendment of Rules 3.407 and 3.288³⁴ the rule was further relaxed so as to exempt broadcasts of transcribed or recorded material of the duration of one minute, or less, from the announcement requirement.³⁵

In the spring of 1946, American Broadcasting Company, Inc., and Mutual Broadcasting System, Inc., requested that, in view of the inability of some segments of the network to broadcast certain programs on a live basis because of a time differential created by the adoption of daylight saving time in other areas, and inasmuch as constant repetition of the announcement that delayed programs were transcribed would be a source of annoyance to the listening audience, the Commission waive the requirement of Section 3.407 with respect to programs delayed for one hour because of the daylight saving time differential. The Commission at first granted the waivers on condition for a period of thirty days. Later the Commission granted extensions of the waiver, on the same conditions, until September 28, 1946, the end of daylight saving time. By letters of March 3 and 7, 1947, American Broadcasting Company and Mutual Broadcasting System requested that the waivers of the requirements of Section 3.407 be granted that year for the period of daylight saving time upon the same condition as the 1946 waiver. At an Executive Session on March 20, 1947, the Commission granted these requests. The General Counsel prepared a Memorandum for the Commission agenda of April 3, 1947, recommending the promulgation of an amendment to Section 3.407 waiving the requirements of said section on condition thus obviating necessity of granting annual waivers upon specific requests. The memo was withheld from the agenda of April 3, 1947 when it was

³³ FCC Minute No. 309-45, dated July 3, 1945 (Amendment No. 272), published July 6, 1945, 10 FR 8381.

³⁴ Rule 3.407 was adopted, in identical language as Rule 3.288 applicable to the FM service (FCC Minute No. 426-45, September 12, 1945). Material concerning the origin of separate FM rules can be found in Docket No. 6768, which was initiated by an Order of July 10, 1945, ordering hearings "For the purpose of considering the promulgation of Rules and Regulations and Standards of Good Engineering Practice Concerning FM Broadcasting."

³⁵ The requirement with respect to identification of transcribed or recorded material of one minute or less was deleted because it "appeared to require more interruptions for explanatory announcements than was necessary to avoid deception of the public." FCC Public Notice 1365, December 5, 1946, terminating proceeding in Docket No. 7611, published December 13, 1946, 11 FR 14291.

discovered that the matter had already received action. By an Order dated April 7, 1947, the Commission amended Section 3.407 of the Commission's Rules and Regulations by adding a footnote at the end of the first paragraph to read as follows:³⁶

"During the annual period in which daylight saving time will be effective, the requirements of this section are waived, with respect to network programs transcribed and rebroadcast one hour later because of the time differential resulting from the adoption of daylight saving time in some areas, upon the following conditions: the waiver is not to be applicable when an individual station makes an off-the-line recording, but is to be applicable only when the off-the-line recording is made by the network itself at one of its key stations, and is for broadcast one hour later by those stations which operate on standard time. Furthermore, each station which broadcasts network programs one hour later in accordance with this waiver shall make an appropriate announcement at least once each day between the hours of 10 a.m. and 10 p.m., stating that some or all of the network programs which are broadcast by that station are delayed broadcasts by means of transcription. A network organization taking advantage of this waiver should so advise the Commission."

On January 16, 1948, at the recommendation of the General Counsel and Acting Chief Engineer, certain editorial changes were made in the Rules and Regulations of the Commission. In the course of such change, Section 3.407 of the Rules was reclassified as Section 3.188.³⁷

In a letter of May 19, 1948, the Fort Industry Company, licensee of Stations WLOK and WSPB, requested that the requirements of Rule 3.188 be waived for the period during which the City of Toledo, Ohio was on daylight saving time in order to permit WLOK to broadcast NBC programs of recordings. The General Counsel recommended the denial of the request because he felt that a recording made by the network itself at a key station presented an entirely different situation from the making of the recording by an individual station. The Commission passed over the recommendation from the June 2, 1948 agenda with instructions that a draft be prepared for the amendment of the Rule. On June 9, 1948, the Commission adopted an order amending Section 3.188 of the Commission's Rules and Regulations by changing footnote No. 1 thereof to read as follows:³⁸

"1. During the annual periods in which daylight saving time will be effective the requirements of this section are waived with respect to network programs, transcribed and rebroadcast one hour later because of the time differential resulting from the adoption of daylight saving time in some areas, this waiver being applicable whether the off-the-line recording is made by the network itself at one of its key stations or by an individual station, but only when the off-the-line recording is for broadcast one hour later by those stations which operate on standard time. Furthermore, each station which broadcasts network programs one hour later in accordance with this waiver shall make an appropriate announcement at least once each day between the hours of 10 a.m. and 10 p.m. stating that some or all of the network programs which are broadcast by that station are delayed broadcasts by means of transcriptions, and indicating whether the transcriptions have been made by the network or the individual station. A network organization or individual station taking advantage of this waiver should so advise the Commission."

On December 13, 1950, certain slight editorial changes were made in the Rule and on June 30, 1953, it was reprinted in 18 FR 3833 dated July 4, 1953.³⁹

On November 3, 1955, certain further editorial changes were made in Rule 3.188. These included the redesignation of the section as Rule 3.118, the placing of the old rule under Paragraph A., redesignation of the lettered paragraphs under Paragraph A in numerical sequence, and the adding of the footnote concerning announcements during periods of daylight saving time as Paragraph B.⁴⁰ The rule, as revised, was to be effective January 2, 1956.

³⁶ FCC Minute No. 105-A-47, dated March 20, 1947 (Amendment No. 329), published April 15, 1947, 12 FR 2435.

³⁷ FCC Minute No. 11-A-48, dated January 16, 1948 (Amendment No. 374), published January 30, 1948, 13 FR 422.

³⁸ FCC Minute No. 228-A-48, dated June 9, 1948 (Amendment No. 3-6), published June 19, 1948, 13 FR 3320.

³⁹ FCC Minute No. 27-S-53, dated July 3, 1953.

⁴⁰ FCC Minute No. 376-A-55, November 3, 1955, published December 9, 1955, 20 FR 9041.

The rule requiring announcement of the use of mechanically reproduced programs on *television* broadcasts was aligned with similar rules of the aural services in 1956. The history of the TV rule reaches back to 1941. At that time, the feasibility of commercial broadcasting by television stations was still a matter of debate. However, the art had advanced to the stage where the Commission deemed it advisable to promulgate certain rules concerning television broadcasts. At its April 30, 1941 session⁴¹ the Commission ordered the adoption of "Rules and Regulations Governing Television Broadcast Stations" and "Standards of Good Engineering Practice Concerning Television Broadcast Stations."⁴² The first rule concerning the announcement of the use of mechanical reproductions on television was proposed to be as follows:

"All motion picture film employed in the broadcasts of a television broadcast station must be briefly described as such at the beginning of any program in which such film is used."

The rule ultimately issued read as follows:

"SEC. 4.263. *Motion Picture Film.* All motion picture film employed in the broadcasts of a television broadcast station must be briefly described as such either at the beginning of the program in which such film is used, or immediately prior to the broadcast of the film. Where the film broadcast is of more than 15 minutes duration, it shall also be briefly described as such either at the end of the program or immediately following the broadcast of the film."⁴³

On November 28, 1945, the Commission repealed Sections 4.201 through 4.281 of Part 4 of its Rules and Regulations and adopted in lieu thereof Subpart D of Part 3 entitled "Rules Governing Television Broadcast Stations." The new rule concerning the use of mechanical reproductions read as follows:

"§ 3.688. *Mechanical reproductions.* (a) Each program which consists in whole or in part of one or more mechanical reproductions, either visual or aural, shall be accompanied by an appropriate announcement to that effect either at the beginning or end of such reproduction or at the beginning or end of the program in which such reproduction is used. No such announcement shall be required where a mechanical reproduction is used for background music, sound effects, station identification, program identification (theme music or short duration) or identification of sponsorship of the program proper.

"(b) The exact form of identifying announcement is not prescribed, but the language shall be clear and in terms commonly used and understood. The licensee shall not attempt affirmatively to create the impression that any program being broadcast by mechanical reproduction consists of live talent."⁴⁴

The above rule was recodified as Section 3.653, without change, on April 11, 1952,⁴⁵ and remained in effect until the 1956 amendments of the rules.

The last change in the mechanical reproduction rules occurred as a result of rulemaking proceeding in Docket No. 11546 which was initiated by petitions of the National Association of Radio and Television Broadcasters (filed on January 24, 1955) and the American Broadcasting Company (filed on June 9, 1955) for amendment of the rules. NARTB requested announcements that programs which are mechanically reproduced be required only in the case of a speech, news event, news commentator, forum, panel discussion, special event, or any other such program in which the element of time is of special significance and presentation of which would create, either intentionally or otherwise, the impression or belief on the part of the audience that the event or program being broadcast is, in fact occurring simultaneously with the broadcast. ABC's petition merely asked for the extension of the daylight saving time extension to cover identification of network programs transcribed and rebroadcast at a later hour because of the time differential resulting from the time zone difference between the place where the programs originate and where they are rebroadcast. On November 17, 1955, the Commission issued a Notice of Proposed Rule Making under authority of Sections 4(i), 303(f), and 303(r) of the Act, inviting comments.⁴⁶ Comments on the proposed amendment were received from over 300 standard, FM, and television licensees and other interested parties who were in favor of relaxing the rules to differing extents. Three parties opposed the original petitions, one opponent being the American Federation of Musicians.

⁴¹ FCC Minute No. 228-41, dated April 29-30, 1941 (Amendment No. 63).

⁴² FCC Docket No. 5806.

⁴³ Published May 6, 1941 in 6 FR 2282.

⁴⁴ Published January 1, 1946, 11 FR 284.

⁴⁵ FCC Minute No. 5-X-52, effective June 2, 1952, published May 2, 1952, 17 FR 3905.

⁴⁶ FCC Minute No. 397-A-55, published November 23, 1955, 20 FR 8641.

On October 8, 1956, the Commission issued a Report and Order amending all the rules concerning the announcement of the use of mechanical reproductions to achieve their present form.⁴⁷ According to these currently effective rules, only those mechanically reproduced programs "in which the element of time is of special significance and presentation of which would create, either intentionally or otherwise, the impression or belief on the part of the listening audience that the event or program is in fact occurring simultaneously with the broadcast" need be announced as mechanically reproduced, provided their duration exceeds one minute. The prohibition against affirmatively creating "the impression that any program being broadcast by mechanical reproduction consists of live talent" was retained in the rules, and the daylight saving time waiver was further extended from the "one hour later" provision to "a later hour" provision to cover broadcasts delayed for more than one hour because of the daylight saving time differential over several zones.

In its Report and Order, the Commission contrasted the needs of the past with those of the present as follows:

"The mechanical records rules were promulgated to protect the listening and viewing public from deception. In former years, mechanically reproduced programs were markedly inferior to live programs, and rules requiring the identification of nearly all mechanical reproductions were necessary to protect the broadcast audience from being led to believe that programs by mechanical reproduction consist of live talent. (p. 8.)

"* * * in the light of the present broadcast situation, the present identification requirements are too stringent, and to the extent that they are, impose a needless burden on the broadcasters and detract from the public's enjoyment of programs. We believe that the general protection afforded by the rules against any affirmative attempt by a licensee to create the impression that any broadcast by mechanical reproduction consists of live talent is adequate to protect the public from harmful deception as to the nature of most programs. * * *" (p. 9.)

From the foregoing it may be concluded that several reasons existed for the promulgation of rules requiring the announcement of the use of mechanically reproduced broadcast programs. One of these reasons was the Radio Commission's opinion that the playing of phonograph records on the very scarce broadcast channels constituted an unnecessary duplication of a service otherwise available for the public. This reasoning was abandoned when the subsequent phenomenal advance of the art produced additional channels. Another reason was to protect the public from gaining the impression that they were observing a live show when, in fact, the program was recorded or transcribed. It also appears that insofar as the required announcements tended to discourage the use of mechanically reproduced programs, this was intended because the technical imperfection of the early phonograph records resulted in inferior program quality. It should be observed, in this connection, that the gradual relaxation of the rule has coincided with the gradual improvement of the technique of reproducing programs by mechanical means.

Mr. LISHMAN. What I am trying to get at here, Mr. Chairman, isn't it possible, and doesn't the Commission have sufficient authority to issue a rule comparable even to that earlier rule which would require a licensee of any television broadcast station, when they are presenting a contest of knowledge or skill, that they make an announcement prior to it showing that there has been an investigation made by the licensee to insure that it is an honest contest and has not been rehearsed in a greater degree than is indicated in the announcement of the show itself?

Mr. DOERFER. I am not prepared to answer, Mr. Lishman, whether or not the Commission has that power. I would have to examine again the specific section, 326, to determine whether or not that is not an attempt to censor an individual program.

Mr. LISHMAN. Again I come back to the fact that when you prohibit the use of mechanical reproductions without a prior announce-

⁴⁷ See Note 1. *supra*.

ment and you felt that the Commission in those days had statutory authority to do that, what is there to change that situation?

Mr. DOERFER. I think this: It is quite within the power and it is quite a proper exercise of the power of the Commission to regulate, by rulemaking, mechanical devices.

For illustration: It is wholly consistent with our duties to manage the spectrum to require an identification of the station on the air.

Mr. LISHMAN. Mr. Chairman, is it not a fact that this rule was adopted in order to prevent deceit of the viewing public? That is the reason for it?

Mr. DOERFER. I don't know about that.

Mr. LISHMAN. That is what the stated reason was.

Mr. DOERFER. I just don't know, Mr. Lishman. I was not on the Commission when the rule was adopted.

Mr. LISHMAN. Mr. Chairman, I am not making any accusations or anything. It just seems to me if the Commission has the authority to issue a rule based on a claimed authority that it was to prevent deception of the viewing public or the listening public, if it had that authority in 1930, I would like to know why it doesn't have the authority today to take similar steps.

Mr. DOERFER. I might say generally there is a lot of power we exercised in the early days we found out we don't have of late.

Let me say this: You do have a specific statute in section 317 which to my knowledge has not been challenged in the courts. I will read it. It is only about six lines.

All matter broadcast by any radio station for which service money or any other valuable consideration is directly or indirectly paid or promised to or charged or accepted by the station so broadcasting from any person shall at the time the same is so broadcast be announced as paid for or furnished, as the case may be, by such person.

Whether or not these people violated this specific section, I am in no position to say, but that may be ample.

Mr. LISHMAN. Doesn't that have to do with the announcement that a payment has been made? Does that have any relation to mechanical reproduction?

Mr. DOERFER. No, I wouldn't say it has that at all.

Mr. LISHMAN. Coming back to your statement, Mr. Chairman, did the Commission feel it was part of its duty to determine the extent of the NBC investigation which you have referred to in your statement in the Stempel and Snodgrass letters on Twenty-One, or does the Commission feel that it can accept such statements from NBC at their face value?

Mr. DOERFER. I don't think that the Commission can necessarily accept any statement at its face value. I would say that if any licensee deliberately misrepresents to the Commission, it is in substantial trouble, more so than any particular violation of, we will say, a Commission rule, it is a crime. You just can't misrepresent.

So there is on the part of the Commission, unless there is something which would arouse its suspicion, it probably would go a little deeper than just a representation.

Let me say this: In respect to these shows, the shows themselves, as I understand, were dropped within a matter of weeks excepting those in which there was some intimation that there were assurances given that there was no deception.

Mr. LISHMAN. Isn't it a fact that Tic-Tac-Dough is still on the air?

Mr. DOERFER. I don't know what the facts are on that. I want to say that as far as the Commission is concerned, it is interested in the overall manner in which these shows are produced. Then it can only come up with general rules.

Mr. LISHMAN. What sanctions does the Commission have available against licensees short of revocation or refusal to renew its license?

Mr. DOERFER. We have a cease and desist order.

Mr. LISHMAN. Would you explain for the record how that would operate?

Mr. DOERFER. First of all, we have to determine that we have jurisdiction with respect to a proposed order. When we have that, then we must supply a reasonable conclusion as to why we are issuing such an order. Then we issue the order in accordance with the procedure set forth in the statute.

Mr. LISHMAN. Mr. Chairman——

Mr. DOERFER. Section 312(b) of the act.

Mr. LISHMAN. Does the Commission have some system of liaison with the Federal Trade Commission?

Mr. DOERFER. Yes.

Mr. LISHMAN. With respect to complaints that the airwaves are being used for false or deceptive advertising?

Mr. DOERFER. Yes, it has.

Mr. LISHMAN. Would you please describe how this liaison works?

Mr. DOERFER. Perhaps I should submit for the record a public notice which was published on February 21, 1957, indicating the liaison between the FCC and the Federal Trade Commission relating to false and misleading radio and TV advertising.

Mr. LISHMAN. How does that work in practical operation?

Mr. DOERFER. Briefly, when the Federal Trade Commission advises the FCC that in its opinion there is some advertising which is false or violates one of the Federal Trade provisions or Federal Trade Commission act, and may be deceptive, advise the FCC, and we contact the licensee and get his version of it. We certainly would not condone any deceptive advertising.

Mr. LISHMAN. Has the Commission ever taken any action in any case to prevent, in connection with its liaison work with the Federal Trade Commission, deceptive advertising?

Mr. DOERFER. I am advised by staff that we send a copy of the complaint and the stipulation to the Federal Trade Commission, and there has been no final determination in some of the cases we have had under consideration.

Mr. LISHMAN. In other words, no punishment has as yet been inflicted upon anyone who has been caught in deceiving or perpetrating deceitful actions?

Mr. DOERFER. I don't know of anybody that has been caught. I don't know whether the practice is being continued. The important thing is to stop it. You have to remember the licensee himself does not necessarily engage in the deceptive practice, although he can't escape responsibility once he is informed. Many times, as in most of these quiz things, that material is presented by independent producers.

Mr. LISHMAN. Mr. Chairman, could you suggest to the subcommittee, first, whether you believe that there should be changes in the existing law in order that you would have more authority to handle deceptive TV programs?

Mr. DOERFER. I have given that some thought. I don't believe, Mr. Lishman, that I could comment at length until we have concluded our present program inquiry with respect to network, producer, advertising and sponsor relationships.

I might suggest, however, without prejudging that proceeding that it is most difficult in the field of dramatic expression to suggest laws which would require that any time something is on the air different from what it purports to be you may be invading almost the entire field of entertainment and public service programing. Although this may be an extreme situation, obviously many public service programs use little props or little devices which may not be true to fact. When you get into a situation which is under discussion with respect to payment beforehand and having the public believe that this is something different than what it actually is, I assure that is just as reprehensible as any other form of deception. But the Federal agency must be concerned with legal deception and with formulation of standards and rules which can be enforced.

Mr. LISHMAN. What do you mean by legal deception, Mr. Chairman?

Mr. DOERFER. Let me say this. I use the expression myself, as have many members of this committee and the newspapers, that this was a fraudulent practice. This was deception. Well, I haven't been able as yet, neither has the prosecuting attorney in New York, been able to pinpoint a violation of law. It is a kind of deceit which the most important element is missing, and that is an extraction of a consideration from somebody who is harmed. You get down to the question as a homeowner, who didn't pay his way into the show or didn't buy the book or something like that, it just has not been that legal consideration.

The reason I say that is because we have, as you know, attempted to take off the air the so-called lottery programs, and we have been reversed by the courts. I think it is very appropriate this time that this committee consider some of the language and the rationale in those lottery cases to see what dedevils the Commission.

May I read just some of this language because I think it is very apropos and would probably throw a good deal of light on the situation?

Mr. LISHMAN. I wish I had the whole case because I think I have some language which will probably modify what you read.

Mr. DOERFER. I think this case and I think the *Cables* case should be in the record.

Mr. LISHMAN. I think reference to the complete opinion should be in this record. I agree with you.

Mr. DOERFER. I would like to indicate that this was a case involving a law—this this a law, a criminal law—enacted by Congress involving lottery or gift enterprise.

Just to refresh your recollection—

Mr. SPRINGER. What is the citation?

Mr. DOERFER. The citation would be *FCC v. The American Broadcasting Company, et al*, decided October term of the U.S. Supreme

Court 1953. I am awfully sorry I don't have the citation here. In that particular case, as you recall, they gave some example of giveaway programs, "Stop the Music", "What's My Name", "Sing It Again", "The Phantom", et cetera. The court held—and I think the language you had in mind, Mr. Lishman, I will read—I am quoting from the Supreme Court:

Like the court below, we have no doubt that the Commission concurrently with the Department of Justice has power to enforce section 1304 of the Criminal Code. Indeed, the Commission would be remiss in its duties if it failed in the exercise of its licensing authority to aid in implementing the statute either by general rule or by individual decisions. But the Commission's power in this respect is limited by the scope of the statute: unless the giveaway programs involved here are illegal under section 1304, the Commission cannot employ the statute to make them so by agency action. Thus reduced to its simplest terms, the issue before us is whether this type of program constitutes a lottery, gift enterprise, or other scheme proscribed by the section.

There are two more short paragraphs.

All the parties agree that there are three essential elements of a lottery, gift enterprise, or similar scheme: one, the distribution of prizes; two, according to chance; three, for a consideration. They also agree that prizes on the program under review are distributed according to chance, but they fall out on the question whether the home contestant furnished the necessary consideration. The Commission contends that there is such consideration in its brief. It urges that these programs 'are nothing but age-old lotteries in a slightly new form.' The new form results from the fact that the schemes here are illicit appendages to legitimate advertising. The classic lottery looked to advanced cash payments by the participants as a source of profit. The radio giveaway looks to the equally material benefit to stations and advertisers from an increased radio audience to be expended in advertising.

Then the Court concludes:

Something more is required than just a benefit to the promotor. The participation of the home audience by merely listening to a broadcast does not constitute the necessary consideration.

By analogy, I cannot see that there has been any legal or illegal deceit. There has been a sort of reprehensible practice which we can probably reach but not specifically. It is only in our overall general program appraisal.

Mr. LISHMAN. Mr. Chairman, I submit with all due respect the language you have read indicates that the Court has relied on the ancient traditional technical definition of lottery which was one of the first things I think prohibited in the statutes of the United States. I am coming up to the present time. It seems to me, with all due respect, that the public interest criterion under which you grant licenses—valuable licenses, free of charge to an operator—under that control you would have the right to make certain that when that licensee comes up for renewal you will review his past performance to make certain that he has not participated in a gigantic hoax on the American people.

Mr. DOERFER. I think you are absolutely right. I think that it requires a good deal of care to ascertain that the licensee himself was involved. You just can't revoke and pull out a license because some employee has conspired to engage in some awful deceit, any more than you can revoke a bank charter because some employee or an officer of the bank has embezzled money.

Mr. LISHMAN. Mr. Chairman, I think it would be very helpful to the work of the subcommittee if the Federal Communications Com-

mission would be requested to compare the replies given to them by the NBC and CBS to the Commission concerning the TV quiz shows about which we have had testimony. Then compare these replies of NBC and CBS to the Commission with the actual testimony taken before this subcommittee concerning the same events. Then we should have the benefit of the results of these comparisons and any recommendations that the Commission might see fit to make.

Mr. DOERFER. Mr. Chairman, we will do that as a matter of course. We have already planned to do that. We feel it is part of our duty.

The CHAIRMAN. I do recall at the outset of your statement, Mr. Doerfer, that you stated that you had not had an opportunity to study and analyze the record of these hearings this week. Therefore, you were not at this moment in a position to comment on that because you had not had a chance to look it over. I think probably the request that you readily agreed to would be appropriate. It does seem to me that we are getting down to this point.

Considering your letter and your testimony, and the letter of the Federal Trade Commission, it has boiled down to the point that apparently from the interpretation of the original act, rules of the Commission and the interpretation of the Commission from decisions of the courts in connection with your responsibility, that there is authority that reaches certain fields connected with the broadcasting industry dealing with facilities and so forth of the industry itself. Advertising, yes, and requiring the licensee to operate, generally speaking, in the public interest, yes. But when it comes to production, which is considered part of the program, then you get involved with the statute on censorship and that seems to me where we go round and round in circles. I assume from what you have said in your letter to the committee and your testimony this morning, that the Commission has decided that the production of these productions, which becomes a part of the broadcast programs, does get into this business of censorship. You have determined, or you question whether the Commission has any authority in that particular field. Am I correct in that?

Mr. DOERFER. Yes. I might say that the majority of the Commission has resolved the question of control over the overall programming in favor of exercising that power by giving a preference in comparative cases in which the applicant or the licensee may be involved subsequently, and gives careful consideration at the time of renewal.

The CHAIRMAN. I should think, then, it might be more constructive to these hearings if we turn our attention as to how this particular matter might be met. We could argue about it probably ad infinitum as to the possibility of the present authority or the possibility that there is no present authority. But probably if we turn our attention to how it could be met, where there would be no doubt about it, it might be more constructive.

Mr. DOERFER. We do have a program investigation on at the present time. It is part of the network study. We have not renewed the licenses of any of the networks under consideration without a condition, and that condition has definite reference to the present investigation. So that when we are complete, we would have, I think, ample grounds which would substantiate some reasonable rule without its being attacked on the ground that we went after one particular program format.

The CHAIRMAN. I have the opinion, in my own views, personally—and I have a feeling that other members share the view—that we want to be certain that there is authority to deal with such problems. The question is how to do it. Most of us, now, are of the opinion that there are certain deceptive actions that have been practiced that should be met. Our problem is how to do it.

Mr. DOERFER. Mr. Chairman, while you are considering this problem, I would like to have this committee consider some court cases which have given me, at least, a good deal of concern.

The CHAIRMAN. We would be glad to have you itemize those for us. Can you give us the citations of the case?

Mr. DOERFER. I will give you the citation of the case.

The CHAIRMAN. Then we will have an opportunity to study and analyze them specifically.

Mr. DOERFER. I will give you the citation of the case and just a brief statement as to why. The freedom of press and the freedom of speech is guaranteed by the first amendment. It applies to the printed media. It has been interpreted by the courts as to prohibit a prior restraint. I guess we all understand that. The Supreme Court, although back in 1943 in the NBC case, 319 U.S., indicated that the Commission was a little bit more than a traffic cop—traffic officer, excuse me—and had the burden of ascertaining the composition of that traffic. But in 1952 and in—no, in 1947 and 1952, the court had this to say. When you consider legislation, you have to look at this almost as though you are going to try to impose censorship on newspapers and magazines. I will read this quote:

Motion pictures are, of course, a different medium of expression than the public speech, radio, the stage, the novel or the magazine. But the first amendment draws no distinction between the various methods of communicating ideas.

That was 346 United States 587.

Another quote:

We have no doubt that moving pictures, like newspapers and radio, are included in the press whose freedom is guaranteed by the first amendment. (334 U.S. 131, 1947).

So the fact that this happens to be a medium which is in the public domain raises substantial questions as to the extent that this Congress and particularly this Commission can invade and attempt to regulate directly or indirectly program material. That does not apply with respect to advertising. The courts have indicated that is a commercial enterprise, and you can regulate that for the same reason that the Federal Trade Commission can. But when we get into this other field, it raises some substantial doubts. So far the only effective way that this Commission has been able to handle that is to take a look at the overall program records of the licensees and take them into consideration, especially when they are in contest for another facility.

The CHAIRMAN. Will you provide us with the citation to these cases?

Mr. LISHMAN. I have two or three more questions, Mr. Chairman. It is all very well to consider these elements of censorship in connection with regulations whereby the Commission in advance of a program and without knowledge of what was going to be in the program should attempt to prohibit. But we have a situation here disclosed in our hearings where there has been vast deception practiced over the airwaves repeatedly over a period of years. Will you consider the

copyright for the Commission to take some step, either to punish any licensee who is guilty of such practice, or should issue a rule stating, in effect, that because of what they had actually done they were being given notice that their license would not be renewed.

Mr. DOERFER. Mr. Lishman, the Commission—the majority of the Commission would not believe that censorship extends to taking action after the fact on the basis that it is contrary to the public interest to continue such conduct. There is one Commissioner who feels to the contrary. It happens to be me. But I might suggest that that question is not clear. The key phrase with respect to an understanding of the word censorship seems to be the exercise or the attempted exercise of an official power to impose a prior restraint to the publication or the enactment of some entertainment or printed media. If, as in the FCC, each license is renewable each 3 years, a substantial question is raised whether or not by refusing to renew a license on the ground that this happens to be contrary to the public interest, that is not some form of censorship to a proposed program for the next 3 years. I can say for myself that I have resolved that the other way. What I am trying to say until the courts say we cannot do it, I would just as soon go along and try to carry out what I think is the intent of the Congress. I don't believe it is up to the Commission to anticipate what may be unconstitutional unless there is a specific law on the subject.

Mr. LISHMAN. Mr. Chairman, isn't it possible under the existing statutory setup for the FCC to issue a rule placing specific responsibility upon the licensee to see to it that no deception is practiced by program producers?

Mr. DOERFER. Whether we can do that or not is the question, Mr. Lishman. I certainly concur with the fact that the licensee should be responsible. You are aware, of course, of the fact that there is a contrary view in Government circles. There is a strong view presented to us that the production of programing should be severed from the licensee entirely. The Commission has throughout the years taken a contrary view, and I might say I have definitely taken the view that would be bad. It would be bad in the public interest. I would much rather increase the responsibility of the licensee over all programing because in that way whether the restraint is by the lifted eyebrow or by the explicit rule, at least we get a substantial response from the licensee.

Mr. LISHMAN. But, Mr. Chairman, irrespective of whether the licensee owns the program produced or whether it is the property of an independent producer, don't you feel that it is possible for the Commission to make a rule placing specific responsibility upon the licensee to see that there is not a deceptive program sent out over the airwaves?

Mr. DOERFER. As I indicated, a specific rule is a hard thing to write. So far the policy of the Commission in considering fraud and misrepresentation and deceit has been an effective deterrent. The networks within a matter of weeks when it was proven to them, or when they were satisfied that there was deception, promptly cut off the program.

With respect to those programs which continue, I assume they continue either because they did not have the proof or they weren't sat-

ified that there was deceit involved. Certainly if we can prove that they participated in this deceit, had knowledge thereof, and condoned it, I would say that network or that licensee is in very serious trouble.

Mr. LISHMAN. Don't you think that in view of all the difficulties that you have advanced because of censorship considerations as to other rules, wouldn't this be a very simple rule which would avoid the issue of censorship and just place responsibility on the licensee for the fact that the program over the station was not deceptive and make them their own policemen.

Mr. DOERFER. I think whatever form or character a rule like that would take would have to depend upon the completion of the study. I would suggest that some of the proposals made are impractical. I think it would detract from the enjoyment of the public or the entertainment value of the presentation for somebody to stand up before the screen and say, raising his hand, "We solemnly represent to the public that this program is exactly what it purports to be and there is no deceit involved." If you do that, every half hour or every hour, it just becomes ridiculous. I would much rather have the licensee give assurances to the Commission that it is doing everything possible to weed out that kind of deceit and misrepresentation. So far the records indicate that the licensees themselves have done that.

Mr. FLYNT. If you will yield to me at that point, Mr. Lishman with regard to that, Chairman Doerfer, don't you think the statement you made simultaneously with raising your hand is implicit in every appearance with what is broadcast over a television or radio station, that it is not a fictional program?

Mr. DOERFER. I think so, Congressman Flynt. I say this within the limits of dramatic license. Certainly a public service program, if you are going to try to whip up some enthusiasm for charitable contributions, there may be some little props, some little things. You might have a presentation of a child that is really crippled. You may have another one who is not really crippled. Nobody would quarrel about a thing like that, but your problem is, once you get to working with language like that, you try to cull out these things which everybody would concede should be permitted as a dramatic license when you get into a situation where you practically emasculate what you are trying to reach in this situation.

Mr. FLYNT. Thank you. I will return to that when my time comes to question. I will not further interrupt your questioning.

Mr. LISHMAN. I have one further question and then I will conclude.

Will you please state for the record, Mr. Chairman, what authority the Commission has over networks as distinguished from individual stations?

Mr. DOERFER. It has no direct regulatory power over a network. In the past the Commission has reached the networks by the fact that all networks, excepting one—which is the subject of separate consideration—are operated by licensees. Our power over the licensee we had deemed in the past to be adequate to regulate the networks. That means has been used to sustain many and all of the network rules on our books today. We do have, of course, the chain broadcasting statute. What is the section on that?

Mr. LISHMAN. 303(i).

Mr. DOERFER. Yes; I think that is the one. Now, with respect to some of the things which developed recently, I sincerely think that the Commission has got to give another careful look at it. I am talking about, of course, where there was a network that was operated quite to my astonishment by somebody who was not a licensee. I am talking about the Mutual Radio Broadcasting and the Guterman situation. It is surprising to me that throughout the 35 years of broadcasting that situation has never arisen. Apparently this is the first time that somebody got control of a network which was not a licensee.

Mr. LISHMAN. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS. Mr. Doerfer, you do subscribe to the philosophy that this is a media that should be regulated; do you not?

Mr. DOERFER. Yes, I do.

Mr. ROGERS. Is there any question in your mind about it?

Mr. DOERFER. The extent of the regulation is what made me pause.

Mr. ROGERS. It is a medium that should be regulated. The degree is a different question.

Mr. DOERFER. Yes.

Mr. ROGERS. In the regulation of this media, do you subscribe to the policy that it ought to be done by licensing procedures?

Mr. DOERFER. I think that is perhaps the only way that I know of that you could do it.

Mr. ROGERS. In your opinion is a license, as referred to in the Communications Act, a right or a privilege?

Mr. DOERFER. It is a privilege, but the courts recently came down and said it was a valuable privilege. I can't see the distinction between a valuable privilege and a property right. They are both valuable.

Mr. ROGERS. I want to get into that in a second. There is no use in us arguing the law here. The law is written in the case books. What we need to do is to find out some way to do something about it. It is a privilege because actually it is subject to cancellation; isn't it?

Mr. DOERFER. That is correct.

Mr. ROGERS. In other words, you have control over the license.

Mr. DOERFER. But, Congressman, you can not revoke that or fail to renew it without reason.

Mr. ROGERS. I know. That is a different problem. Is the length of the licensing period changed into a right during that period, in your opinion, where you do not have the power of cancellation until the end of the licensing period?

Mr. DOERFER. No. The Commission could revoke a license within the 3-year period.

Mr. ROGERS. I understand.

Mr. DOERFER. May I offer an observation? If we could revoke the license within 3 years of litigation, we would really be——

Mr. ROGERS. For violation of rules and regulations?

Mr. DOERFER. That is right.

Mr. ROGERS. Do you have under the act the rulemaking power that Congress has granted in so many instances of this kind where we have fully delegated powers to the administrative agencies to make rules on, we will say, items to be affected or regulated?

Mr. DOERFER. Yes.

Mr. ROGERS. Is it your opinion that you do not have the power to make a rule dealing with the broadcasting of false and deceitful information?

Mr. DOERFER. No; I think that we have the power to prepare rules or promulgate rules against certain types of false and deceitful information.

Mr. ROGERS. Have you done that?

Mr. DOERFER. Specifically?

Mr. ROGERS. Yes. I mean a type. I don't mean one particular specific product. I am talking about a type of broadcasting.

Mr. DOERFER. You are asking whether we have a rule on the books?

Mr. ROGERS. Yes.

Mr. DOERFER. I am not aware of that. Of course, you understand everything that the Commission does does not require a rule. It goes almost without saying that a material misrepresentation, for illustration, to the Commission entails some legal sanctions. Certainly a fraudulent advertising or even a fraudulent statement with respect to some other matter on the air which is legal fraud or legal misrepresentation, we really don't need a rule to impose a sanction there.

Mr. ROGERS. What you mean is actionable fraud?

Mr. DOERFER. Yes.

Mr. ROGERS. Fraud that would be subject to criminal penalties under criminal statutes or fraud that would be subject to civil liability?

Mr. DOERFER. That is right.

Mr. ROGERS. Or subject the perpetrator of the fraud to civil liability. In other words, to deal with the situation that did not come within either of those two categories, you would have to have a rule, would you not?

Mr. DOERFER. I don't know whether we would need a rule. We would need ample justification in the event we took action in response to that.

Mr. ROGERS. Let us assume that you have a power to make such a rule.

Mr. DOERFER. I don't know whether we have. I really don't. I don't know whether we can promulgate a rule which is short of those elements which make it an illegal fraud and illegal misrepresentation, and illegal deceit. Because as I tried to explain, if it is done outside of the commercials, to make myself perfectly clear—I think both FCC and the Federal Trade Commission have ample power to impose a legal sanction in the field of commercialization—where you get into the program you get into what is called freedom of expression and in this case dramatic presentations.

Mr. ROGERS. I do not want to get up into the airways on this thing. Let us stay on earth and get this thing settled.

Your position is simply this: If it is an actionable fraud, either civilly or criminally, that you do not need a rule to do anything to make a station correct it?

Mr. DOERFER. That is right.

Mr. ROGERS. That is either in the commercial or in the program?

Mr. DOERFER. That is right.

Mr. ROGERS. You take the position that you have the power to make rules under your rulemaking power, that these stations are to go by, these licensees are to go by, for a proper dissemination of the information over the airways, do you not?

Mr. DOERFER. I don't want to be quibbling with you, but the key word there is "proper".

Mr. ROGERS. Proper?

Mr. DOERFER. Did I misunderstand you, the "proper dissemination"?

Mr. ROGERS. You can use "proper" or "authentic" dissemination of information.

Mr. DOERFER. If it is in the context of a dramatic presentation or entertainment, I just doubt that very much.

Mr. ROGERS. What you are saying is this, Mr. Doerfer: You take the position that if you did adopt such a rule and undertook to enforce it, you might run into the bar of constitutionality?

Mr. DOERFER. Not only that, but section 326 of the act.

Mr. ROGERS. You have had numerous complaints concerning false statements over TV and over radio, especially in regard to quiz programs, have you not?

Mr. DOERFER. I am not aware of that. No. I think the first intimation we had was what we got from Mr. Hilgemeier.

Mr. ROGERS. How long ago was that?

Mr. DOERFER. And then the other information. That was in July 31, 1958.

Mr. ROGERS. Do you think, Mr. Doerfer, that you ought to have the power in the regulatory body of which you are chairman, to set rules to control the broadcasting of the types of information broadcast over the TV quiz shows?

Mr. DOERFER. You don't mean that the Commission should have—excuse me, you are asking me whether I think we should have.

Mr. ROGERS. Yes, whether you think so as an individual.

Mr. DOERFER. No, I do not think that the Commission should have power to rule off quiz programs, if that is what you mean.

Mr. ROGERS. I did not say that, Mr. Doerfer.

I said the type of quiz program we have had before us. I am talking about fraudulent and deceitful statements over the air and fraudulent representations to the American public in a program.

Mr. DOERFER. Again I just have to come back to no, if there is no legal fraud involved, and yes, if we can promote the public interest and not run afoul of the Constitution.

Mr. ROGERS. You mean if it is constitutional, you think you ought to have the power to regulate it and do something about it if it occurs again?

Mr. DOERFER. I think so. If there is no question about the constitutionality and we don't run afoul of section 326 and if we can enhance the public interest in a practical manner without destroying, because sometimes you have to endure some evils for the overall good—you can't have anything perfect—I would say in that context, yes.

Mr. ROGERS. Mr. Doerfer, in 1958 when you first came into this information, is that the information you have had that these TV shows were rigged and phony and fixed?

Mr. DOERFER. That is the first information I had, yes.

Mr. ROGERS. Did you make any investigation at that time?

Mr. DOERFER. Yes. We undertook immediately to contact. We followed our usual procedure. We contacted the licensee and said, "This

complaint has been made against you, what is your version of this?" We did send up investigators to discuss that.

Mr. ROGERS. Did you have any information from Mr. Stempel in 1957 as to what had been going on in this Twenty-One show?

Mr. DOERFER. I have no information on that.

Mr. ROGERS. Did the Commission have it?

Mr. DOERFER. I wouldn't know.

May I inquire of the staff?

Mr. ROGERS. Yes. I would hope so.

Mr. DOERFER. Could we identify that statement?

Mr. ROGERS. What is that?

Mr. DOERFER. Did Mr. Stempel say that there was information given to the Commission?

Mr. ROGERS. I don't know. I am asking you.

Mr. DOERFER. Let me ask the staff.

The three staff members I have here, Mr. Cowgill, Mr. Nelson and Mr. Fitzgerald, say "No."

Mr. ROGERS. They say Mr. Stempel did not report?

Mr. DOERFER. They have no knowledge of his report.

Mr. ROGERS. Did you read anything about these things in the newspapers, Mr. Doerfer?

Mr. DOERFER. No.

Well, you mean the time element? I did after July 1958 or August 1958.

Mr. ROGERS. I am talking about 1957.

Mr. DOERFER. No; I don't recall that at all.

Mr. ROGERS. Do you mean that the first information you got was at the same time that the newspapers printed the stories that were given out in New York?

Mr. DOERFER. The first information that the Commission got was July 31, 1958.

Mr. ROGERS. You mean official information?

Mr. DOERFER. No; I wouldn't call that official information. Of course, I have to speak for myself. I don't know whether the other people saw anything like that in the newspapers. My answer is "No, I don't recall anything at all." I had not the slightest intimation.

Mr. ROGERS. In other words, you had not the most remote idea that any such thing was going on until you got the information in July or August 1958?

Mr. DOERFER. That is right.

Mr. ROGERS. Did your investigation at that time show that that information was correct or partially correct or wrong?

Mr. DOERFER. As indicated, the information proved to be—I am going to say—substantially correct enough to activate the licensee to take the program off the air.

Mr. ROGERS. Did you make any investigation of other quiz shows at the time beside the particular one that was in focus?

Mr. DOERFER. Let me inquire of the staff. Yes; the licensees of all the networks were queried.

Mr. ROGERS. Did you make any, or have any, discussion with the licensees as to what they should or should not do with relation to this type of quiz program?

Mr. DOERFER. I have to correct the record. I said all of the networks; I understand that ABC didn't have any quiz programs and therefore was not queried.

Mr. ROGERS. That is right.

(The pending question was read by the reporter.)

Mr. DOERFER. Just the correspondence which is in the record.

Mr. ROGERS. What is that?

Mr. DOERFER. The correspondence which I introduced in the record this morning, the networks indicating what precautions they were taking to prevent a reoccurrence.

Mr. ROGERS. In other words, you did take the position, Mr. Doerfer, that what they were doing was wrong?

Mr. DOERFER. No; we have not concluded. That is still pending.

Mr. ROGERS. You mean before the Commission?

Mr. DOERFER. The entire programing thing is before the Commission and this is part of it.

Mr. ROGERS. You misunderstood me. You do take the position as an individual that what happened on those TV programs was morally wrong, do you not, Mr. Doerfer?

Mr. DOERFER. I think it was most reprehensible.

Mr. ROGERS. What?

Mr. DOERFER. Personally, yes; I think it was most reprehensible.

Mr. ROGERS. The question that is in your mind is whether or not, under the Constitution rules can be adopted by your Commission or laws passed that would correct that morally wrong situation.

Mr. DOERFER. That is precisely the question.

Mr. ROGERS. When you found this out and you had this question in doubt in your mind, did you come to the Congress at that time and make any suggestion or recommendations with relation to Congress doing something to grant you the powers necessary to bring this about?

Mr. DOERFER. No; I did not.

Mr. ROGERS. Why did you not, Mr. Doerfer?

Mr. DOERFER. Because, we had not and have not completed to this day, all aspects of the programing operations.

Mr. ROGERS. Mr. Doerfer, do you mean that it is the position of the Commission down there that something in your own mind, in your own personal mind, that is fraudulent and immoral, should be allowed to go on?

Mr. DOERFER. No; I do not.

Mr. ROGERS. Until you complete an investigation a year or 18 months or 2 years later?

Mr. DOERFER. I do not. The record shows that in all the known cases, it was discontinued within a matter of weeks.

Mr. ROGERS. "Tic-Tac-Dough" or whatever that show is has been continued.

Mr. DOERFER. As I understand, in that particular case there is no proof at all that the licensees knew or participated in it.

Mr. ROGERS. That comes under another question that I want to ask. You did not notify the Congress of what was going on concerning this, and of the doubt and question in your mind as to whether or not you had the right or the power to regulate this, from a constitutional standpoint, and you thought something ought to be done about?

Mr. DOERFER. I don't know when I came to the conclusion that the allegations were true. What I was talking about as being reprehensible was the proof which was adduced recently. I could not believe until last week that these things actually happened.

Mr. ROGERS. Mr. Doerfer, don't you think that the agency of which you are Chairman has an obligation, not only to the Congress, which mothered you let us say, but to the American people whom you are supposed to protect, and take every step possible to see that the rights of the public are protected?

Mr. DOERFER. I can only say that we can take those steps which are practical and within our power.

Mr. ROGERS. You mean now that if they are not within your power that you are supposed to sit down and wait until Congress finds out about them and initiates some procedure?

Do you not think it is within your responsibility and your obligation to notify the Congress as to what is going on and what you think about it?

Mr. DOERFER. I am not even prepared today, Congressman, to suggest to this committee what legislation it can propose to stop it.

Mr. ROGERS. You mean you would not even recommend stopgap legislation to put a stop to a practice the radio and television people have given testimony to as being deceitful and fraudulent, on this witness stand?

Mr. DOERFER. I would say I would never recommend to Congress the adoption of any law under the guise which should suppress something which may be unconstitutional.

Mr. ROGERS. Even in your own mind it is fraudulent, unmoral or deceitful?

Mr. DOERFER. I didn't say. There are many things which may be fraudulent and reprehensible which law cannot reach, or the FCC.

Mr. ROGERS. And you take the position that because you conclude that, you should not even report it to the Congress that set up your agency and try to get them to do something about it, the representatives of the people?

Mr. DOERFER. I wouldn't go that far.

I think if this Commission was satisfied and had concluded its investigation that certainly the Commission is dutybound to submit that to the Congress. But whether or not we do it piecemeal, I don't think so.

Mr. ROGERS. Do you think that the American people ought to be subjected to being deceived and defrauded insofar as what is being represented to them, while you and the organization you represent decides whether or not you have the constitutional power to move in, even if that takes a year or 8 months or 2 years, before you make a recommendation or a suggestion to Congress that something be done about it?

Mr. DOERFER. I think for a Commission to intimate to the American people that it can deal with a subject which is beyond its powers is just as much a deceit as what has been going on.

Mr. ROGERS. Let me have that again.

(The answer was read by the reporter.)

Mr. ROGERS. You mean, Mr. Doerfer, that you are the final supreme court in the determination of what powers you have the right to exer-

cise and that no one is above you and that you make the decision insofar as the American public is concerned, that Congress has no determination as to that right at all?

Mr. DOERFER. No, I do not. I certainly didn't mean to intimate that.

I tried to present cases here which indicate that there is substantial doubt about the FCC's power. You, Congress itself has enacted section 326.

Mr. ROGERS. That is the point I am asking, Mr. Doerfer. If there is some doubt about the power of the FCC, where are you going to get that power changed?

You are going to get it changed in the Congress, are you not?

Mr. DOERFER. Yes.

Mr. ROGERS. Yet you apparently do not want to come to the Congress to ask that the power be changed so it can be corrected.

Mr. DOERFER. That is not true.

I will say this: I have not given serious consideration to launching a program to change the Constitution.

Mr. ROGERS. I am not talking about that.

If a man just concludes that the Constitution is a bar and that somebody has figured out a way to defraud and deceive the American public and say, there is nothing we can do, these people are going to be deceived because the Constitution, in my opinion, is not right.

Mr. DOERFER. I didn't say in my opinion necessarily without any justification. I cited cases and I am prepared to cite more cases to indicate the limitations. I myself am an officer. I have sworn to uphold the law. If the Constitution in my interpretation, based upon reason, not just pulling it out of the air—not a predilection—I conclude that there is a great deal of doubt about it, I would much rather make a comprehensive study and present that to Congress before I would anticipate.

Mr. ROGERS. Mr. Doerfer, as a lawyer you know that the decisions of the courts of this land can only be changed by one body, do you not, or two bodies? The courts reverse themselves sometimes.

The only other body that can change that is the Congress.

Mr. DOERFER. Congress can't change the Constitution. The Congress can't change the Constitution.

Mr. ROGERS. The people can change the Constitution.

Mr. DOERFER. Certainly.

Mr. ROGERS. It cannot be done except through Congress.

Mr. DOERFER. I don't know. I have forgotten.

Mr. ROGERS. The chances are that it will not be. What constitutional provision do you have in mind?

Mr. DOERFER. Freedom of speech.

Mr. ROGERS. Freedom of speech?

Mr. DOERFER. Freedom of press. The first amendment to the Constitution.

Mr. ROGERS. You mean you take that as a blanket justification to permit the American people to be deceived for a period of a year or 18 months without ever reporting it to the Congress?

Mr. DOERFER. I don't take that as a blanket. I am merely presenting to you the various considerations which have thrown substantial doubt into precipitous action on the part of the Commission.

To tamper with our cherished freedom of speech is not a simple proposition. It takes a good deal of study.

Mr. ROGERS. No, but Mr. Doerfer, the freedom of speech is not a licensing matter. The people who are using the public property, in this instance, the air waves belonging to the people—they cannot operate over those except by a license, can they—and you have the power to cancel that license for violations of rules. Yet you cannot, knowing about this, even come to the Congress and ask them to arrange so you could write rules, and you took the position you did not have the power to do so.

Mr. DOERFER. Congressman, I suppose we could go on at length with respect to our interpretations.

I would suggest that you read *Lady Chatterly's Lover*.

Mr. ROGERS. Let me say this to the gentleman——

Mr. DOERFER. Just a moment.

Mr. ROGERS. I have read *Lady Chatterly's Lover* a long time ago and I think it is the most indecent thing ever done, or one of the most indecent, and I would not read it again, and I think Summerfield ought to be commended by some kind of citation for trying to stop it and I think the Justice Department ought to be investigated for trying to keep him from stopping the dissemination of it.

Mr. DOERFER. I don't know about it.

Mr. ROGERS. If it is ever put over TV on over radio, something ought to be done or else we might as well admit our morals have gone down the drain.

Mr. DOERFER. I cannot agree with you more. I was quite shocked to read a district court decision of the U.S. court in New York which says that is not a violation of the obscenity statute.

Under the guarantee to the first amendment, it can be put on any book shelf in the country.

Mr. ROGERS. But you are not dealing with the same kind of situation here as you were with the *Lady Chatterly's Lover*. If they put *Lady Chatterly's Lover* on the TV show, do you take the position that you could or could not cancel the license of the owner of that station?

Mr. DOERFER. Let me say I would risk going to jail getting that off the air.

Mr. ROGERS. All right.

You would certainly take action on that, would you not?

Mr. DOERFER. Yes, I would.

Mr. ROGERS. Do you not think by the same token you ought to take action on anything that is deceitful or fraudulent broadcast to the American people?

Mr. DOERFER. I think we did the best we could do under the circumstances. We got an immediate response from the networks that they were going to take care of that themselves and they have.

Let me say this, Congressman: Had those programs continued, and had we had knowledge and been satisfied that the network licensees themselves knew about it, I think your implied criticism of me today would be warranted. But you have to remember, go back to the context of this thing, apparently within a matter of weeks the licensees responded as any reasonable person would.

It remains to be seen whether one of those programs which was still continued on the air was with the full knowledge of the responsible officials of that network.

Mr. ROGERS. Mr. Doerfer, the fact of the matter is this: that the networks and also the stations, according to the evidence that has come before this subcommittee, had evidence, and substantial evidence, a long time before they ever stopped those shows or before those shows and programs were ever taken off the air.

Actually one of the reasons that could be attributed to this action on their part was the fact that they began to lose interest and the shows did not maintain their ratings.

In other words, the American dollar got involved in this and they were looking for ways to get out of it. That is something to be concluded otherwise. The fact of the matter is simply this: with that sort of thing in your mind, do you think that some action should be taken to license the networks themselves?

Mr. DOERFER. I wouldn't hesitate to give very serious consideration to a reversal of my opinion sometime ago that network licensing would be a vain effort on the part of Congress because we could reach it through the licensee. With the developments, as you have indicated, I am inclined very much to consider very carefully the licensing of networks, indeed.

Mr. ROGERS. Do you mean that you think if a thing like this is going on in the future, that they should or should not be subjected to regulation by license, the networks themselves?

Mr. DOERFER. Yes. If I understand your question, I think where we cannot reach network practices through our power over the licensee, certainly it calls for the licensing of the network.

Mr. ROGERS. You do think that Congress should spell out each one of these different items in this whole field, where in your mind there is a doubt, or do you think that the Commission could properly handle this with the proper exercise of rulemaking power that is presently vested in you, or could be vested in you, by the Congress?

Mr. DOERFER. Let me say this: I subscribe to the theory that it would be much more expeditious for the Commission to adopt rules. In this particular field, I would be very grateful to think one who could write for me a rule, that both you and I would be satisfied with, would reach the particular evil that you are concerned with, without substantial damage to the overall ability of the entertainer, the playwright, the commentator to express himself.

Mr. ROGERS. Mr. Doerfer, you and I know that there never was a law written to correct an abuse, and it is for the correction of abuses that so many laws are written, without a lot of hard exhaustive work, thinking and research, was it?

Mr. DOERFER. And there never was a law written—

Mr. ROGERS. Your Commission has been vested with the authority by this Congress to be expert on this community subject?

Mr. DOERFER. We are not experts on programing.

Mr. ROGERS. Wait just one minute. I would think that the Federal Communications Commission would have this in their mind as one of their primary objectives, and that they would be able to come up with some suggestion for the Congress to act on that could correct this situation.

Mr. DOERFER. All I can say in answer to that, first of all there are no laws which have corrected all abuses in any walk of life, and that the Commission's primary concern is not with programing. That is a misunderstanding of the Commission's main functions.

I might indicate if Congress gave us that power, and with all of the doubts with respect to the law, we would have a substantial problem in trying to enforce program regulation to the extent that you have indicated.

These are all easy things to see from hindsight. But beforehand, when the only conspirator is a producer and a talent, to get them to say what have you done lately and tell me under oath is a pretty hard thing.

Mr. ROGERS. There is not any question about that. It is hard to catch a thief at night and it is hard to prove it in court.

If you have ever been a prosecutor, you know it, because the burden of proof is on the state beyond a reasonable doubt. I have been there. I know how difficult it is.

But if we are going to say this is just a difficult problem so we are going to throw the ball to somebody else and let them carry it, then I think we ought to do away with the Federal Communications Commission and let the Congress take over this thing and start writing these laws and spell it out in detail, everything that is to be done, and get away from this business of rulemaking powers which apparently has not been exercised with effectiveness.

Mr. DOERFER. Congress has indicated that the development of the broadcasting field was to remain in the field of private enterprise. It has never made a common carrier out of broadcasting. It specifically directed FCC to keep away from it.

Mr. ROGERS. Do you specifically recommended it should be a common carrier?

Mr. DOERFER. No. I would not recommend it any more than I would recommend newspapers and playwrights be common carriers.

Mr. ROGERS. But you do admit that it is public property that these people are using as far as the air waves are concerned, and the practice that has been going on, as testified to before this subcommittee and the grand jury has been immoral?

Mr. DOERFER. That is right. Public property is used when we lay down a highway and we have still not prevented the appalling death rate of the country. There are hard things to reach.

Mr. ROGERS. Are you telling this subcommittee that you think the problems disclosed during these hearings are in a category that becomes almost impossible to reach?

Mr. DOERFER. You are talking about a particular situation. I, as a commissioner and administrator, must be concerned with setting up machinery which will scrutinize all the programing to determine whatever is objectionable, even slightly deceptive to grossly deceptive short of legal deception, and how to cull it out. That is a difficult problem.

Mr. ROGERS. You think it is so difficult that you do not think it can be solved?

Mr. DOERFER. I did not say that; we are still in the process.

Mr. ROGERS. Do you think Congress may be of help to solve it?

Mr. DOERFER. We may need legislation.

What I am trying to say is that we are still in the endeavors of, first of all, trying to ascertain all the facts. As I have indicated before, sixty thousand hours a day of programing is quite an undertaking.

Mr. ROGERS. I know. We are not talking about that. We are talking about a specific situation here.

If it is going to be a case of saying this is too tough a job to do, it has too many ramifications to it, we can't do it, I think the Commission ought to either say that to the Congress and say we are pitching the ball to you to do something about it, or you ought to say, here are some suggestions that we think will work to protect the American people.

I think it boils itself down to that situation.

Mr. DOERFER. That is what I am trying to do.

I am trying to alert this committee to the legal difficulties and the practical difficulties.

Mr. ROGERS. This committee got alerted on this thing from a source other than the FCC.

Mr. DOERFER. That may very well be.

Mr. ROGERS. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Mr. Chairman, from all the testimony you have given, I take it that it is your fundamental position that there is not sufficient legal authority at the present time for you to solve this particular problem and to prevent it from happening in the future?

Mr. DOERFER. I agree.

I am trying to say that the legal authority requires a certain amount of sorting and classification.

Mr. SPRINGER. Mr. Chairman, could you first answer that question yes or no?

Mr. DOERFER. Yes.

Mr. SPRINGER. Yes; that is your fundamental position.

Now would you go ahead and qualify it?

Mr. DOERFER. I have nothing more to offer than what I have indicated.

Mr. SPRINGER. You have not yet come to any positive conclusion as to what legislation is necessary to correct this abuse?

Mr. DOERFER. I have not.

Mr. SPRINGER. It is your intention to cooperate with this committee in every way possible to see that legislation is brought forward which will correct this for the future; am I correct?

Mr. DOERFER. Yes.

Mr. SPRINGER. I would like, for whatever I can offer constructively, Mr. Chairman, to get your impression of what has taken place before this committee, in an effort to bring forward that kind of legislation.

It appears to me that there are three areas that ought to be covered. How you are going to do this remains a question. If there is any area not now covered which grew out of this testimony, it appears to me that it is the independent producer.

I would say that 90 percent of the testimony rendered thus far, and I am only interpreting it for myself and not for the rest of this committee, was that when the networks themselves knew this was going on, they took action. There is an area of 10 percent that I am not sure about, as to one network, as to whether they took action or not.

I would say 90 percent of the testimony indicated that when they knew they took action. But in most of the areas there were producers independent of the networks who produced and packaged the shows and sold them in a package to the networks. That at the pres-

ent time is not covered by your regulations and you have no authority to act in the case of independent producers of shows; do you?

Mr. DOERFER. We have no authority over the independent producer.

Mr. SPRINGER. The second point: Have you noticed in the last few years that more shows are being packaged and produced and sold to networks than ever before?

Mr. DOERFER. I don't know, Congressman, what the figures are.

Mr. SPRINGER. May I refresh your recollection by giving you some examples. Warner Bros. has been doing this extensively—so has Desilu Productions, Paramount and Columbia. These movie producers sell independent packages to the networks and the networks have no control over them whatsoever. In fact, the time after 10 o'clock at night appears to be almost exclusively controlled by independent producers who run films rather than live performances. This appears to be the trend of the future. Do you feel, Mr. Chairman, that it would be helpful to the Commission to have some control over those people who are selling package productions to the networks?

Mr. DOERFER. The answer is very doubtful.

I would be inclined to say no. I think, pending the completion of our investigation, at the moment I would say that I would much rather put the full responsibility upon the licensee.

Mr. SPRINGER. Mr. Chairman, do you feel that if the networks themselves had had full production control of all of the quiz programs, that the public would have been subjected to these deceptive practices?

Mr. DOERFER. I am inclined to think, yes. At least if they had, it would be much more difficult for them to escape responsibility for it.

Mr. SPRINGER. Is your confidence in the integrity of the networks such that you believe that if they had controlled these productions these deceptive practices would not have occurred?

Mr. DOERFER. I think that the incentives to them to retain their license, plus their past conduct in programing and producing some pretty good programs, and presenting the public with a service, that they could be trusted and many of these things would not have happened. I do not say that there could not be an occasional disloyal conniving employee or even an officer.

Mr. SPRINGER. Mr. Chairman, they could not afford, being licensees, to even think of engaging in these kinds of practices with millions of dollars at stake?

Mr. DOERFER. I don't think so.

Mr. SPRINGER. These independent producers who are producing on their own, and they have nothing like this at stake except to sell the production, can afford to take these risks; can they not?

Mr. DOERFER. I think so.

Mr. SPRINGER. That is one area, I think, Mr. Chairman, to which consideration certainly should be given.

The second is this: Do you believe it would be well to cover these practices by a criminal statute?

Mr. DOERFER. Well, I am always rather reluctant to charge in with criminal sanctions. I am not prepared to answer that question, Mr. Congressman.

Mr. SPRINGER. Let me ask you this: If you covered it by criminal sanctions, which would be the second way to approach this problem, do you feel that the statute should be applicable to the licensee and to

all other parties involved, or do you feel you have sufficient control over the licensees that the criminal statute should apply only to those who are not licensees?

Mr. DOERFER. Assuming that Congress can adopt a law whereby it could reach this conduct and have it sustained, then certainly anybody who willfully with full knowledge has engaged in that kind of practice certainly should be subjected to some substantial form of legal sanction.

Mr. SPRINGER. That would include all people who violated the law whether they were licensees or not?

Mr. DOERFER. All of them.

Mr. SPRINGER. Now to the third step, Mr. Chairman.

I take it it is your feeling at this time that the proper approach would be to give you more supervision over the licensee himself.

Mr. DOERFER. Indeed it would.

Mr. SPRINGER. Those are the three recommendations that I personally would make to the Commission and I would suggest that they be given serious thought. First, some control over independent producers who sell to the networks.

Second, just how far criminal penalties should be attached to people who engage in these practices.

And third, whether or not you should be given more supervision over the licensee himself in enforcing the kind of practices that you feel are proper and in the public interest.

The CHAIRMAN. Mr. Flynt.

Mr. FLYNT. Thank you, Mr. Chairman.

Mr. Doerfer, I cannot agree with your basic premise that the Federal Communications Commission has no power to control or prohibit actions such as this or punishment if such action is proved.

Mr. DOERFER. I am sorry if I gave the impression that we have no power. I merely indicated there was a doubt.

Mr. FLYNT. I think that the Communications Commission has had, during the entire period since the first allegation of fraud was made, the power to effectively deal with, prohibit, and punish activities of this kind.

In that connection, if the Communications Commission had acted and had made an investigation comparable to the inquiry now being made by this subcommittee, it would not have been necessary for this subcommittee to have conducted these hearings.

For example, when you first learned of it and you were notified by one of the networks, as evidenced by correspondence that you have introduced here, did you consider the mere writing of a letter to the National Broadcasting Company an investigation? You said you had made an investigation. I am wondering what kind of investigation it was.

Mr. DOERFER. Yes. I think that we did. Perhaps we should furnish for the record the staff's recommendations, especially those people who were directly involved in the investigation, to the Commission, which were to the effect that this should be taken into consideration in its network programing study.

Congressman Flynt, I wish to point out that concurrently with the Commission investigation, there was being conducted a grand jury investigation. At the same time, as I have indicated, there was suffi-

cient representation on the part of the networks and action and statement of procedures which assured the Commission that these practices would not continue.

I cannot agree with you that we could reach and punish, as you have indicated, the program producers. We just cannot do that. Perhaps we could indirectly by taking such actions that they would become discredited publicly.

Again we had another delicate situation with the grand jury investigation pending. Our primary concern was to get it off the air immediately and to get assurance from that spigot through which it gets on the air that it would not condone it.

We just cannot go out and try to punish people who are not directly responsible to the Commission.

Mr. FLYNT. Mr. Chairman, I was amazed a day or two ago when this committee received a letter from a Charles E. Burdick of Binghamton, N.Y., in which he encloses a copy of a reply to a letter from him dated as recently as August 28, 1959, where it appears to be—I will say it is—expressed in writing that neither the Communications Act—I will read the whole thing into the record at this point.

This is a letter addressed to the Committee, Mr. Harris the chairman:

DEAR SIR: I am enclosing an article regarding your investigation of certain agencies. I am also enclosing some correspondence I have had with the U.S. Attorney General and the Federal Communications Commission.

It appears to me that there is something not on the level with a great many of these so-called contests. I recently won a prize on a contest and was supposed to also receive a bonus of about \$850. I did not receive the bonus. They gave some very peculiar excuses why they would not pay it. This was one of the very large radio corporations. I am certainly very pleased that you are investigating these apparent frauds and hope that the enclosures will be of some help to you.

He enclosed, among other things, a letter from the Federal Communications Commission, Washington 25, D.C., August 28, 1958, addressed to him:

DEAR SIR: This is with reference to your letter of July 20, 1959, addressed to the U.S. Attorney General and forwarded to the Commission for response, in which you inquired whether residents of New York State are barred from participating in the "Top Dollar" television program. Neither the Communications Act of 1934, as amended, or the Commission's rules and regulations prescribe the manner in which broadcasting stations shall conduct prize-winning contests.

As you may know, the selection and presentation of radio program material is the responsibility of the station licensee and the Commission does not determine the particular programs or types of programs to be presented over the air or the methods used to determine contest winners. Accordingly, you will understand why the Commission records do not contain the information you requested.

We regret the Commission cannot be of assistance to you in the above matter.

Signed by the Secretary of the Commission.

Is it the announced policy of the Federal Communications Commission that the sole responsibility for what comes over the air in the way of television and radio programs rests with the station licensee rather than with the Federal Communications Commission?

Mr. DOERFER. The primary responsibility is on the licensee: yes.

Mr. FLYNT. You mean that the regulation of what comes on over the airwaves, the natural resource of this country, is not the primary

responsibility of the agency set up to regulate it; but, rather, is given to the regulated rather than the regulator?

Mr. DOERFER. Congressman Flynt, the Commission has always taken the position that it has no power whatsoever over individual programing. It can only consider the overall programing of a licensee. We have to take the good and the bad into consideration. We just could not tell a licensee, you can't do this.

Mr. FLYNT. Mr. Doerfer, if a licensee produced a program containing vulgarity and obscenity, how long would it take you to take action?

Mr. DOERFER. May I tell you the kind of action I took just a couple of weeks ago?

Mr. FLYNT. First of all, could you do it within 24 hours?

Mr. DOERFER. I did it within a matter of minutes. I called long distance, and I was assured that within a matter of hours this disk jockey was off the air because it involved, in my opinion, at least the allegation—I probably should not discuss it in detail because I will have to sit in judgment of it some day—but the disk jockey was discharged.

Now, again there was a great deal of consternation on my part and I had to handle it very diffidently, indicating that the responsibility was the licensee. Unless these things are called directly to my attention, and unless the Commission establishes a policy where the individual Commissioner will get a hold of the phone and use what might be called the lifted eyebrow technique, I don't know of any procedure we can use against individual programs.

Mr. FLYNT. Your explanation, which I think is a good one, proves exactly the point I was trying to make a minute ago.

The responsibility lies with the Commission. The licensee apparently would have taken no action to remove this objectionable disk-jockey from the stage unless you had acted. You did not leave that up to the licensee.

Mr. DOERFER. No.

Mr. FLYNT. And you went to the source of the trouble, the source of the objectionable material, even though you did go through—I presume you went through the licensee—but you did not wait for the licensee to do it. You did not take action against the licensee itself. You went to the source of the objectionable material.

Mr. DOERFER. Yes, I did.

I might say this: that the licensee indicated he knew nothing about it. We were asking for further information.

No. 2, this was in my opinion a direct violation of that provision of the statute which prohibits or proscribes indecencies. It is the United States Code. I am sure of my ground that if this thing happened, it was an indecency and we could move.

We set into this quiz business, as I have indicated I am as much appalled as anyone, but there are a lot of things I am appalled about that the courts, the law, or any other practical means are not available to correct.

Mr. FLYNT. Mr. Chairman, without objection I am going to yield at this time to Mr. Moss, who has to catch a plane and I would like without objection to resume after he completes his line of questioning.

Mr. MACK (presiding). I am sure the gentleman has a right to yield to his colleague.

Mr. Moss. Mr. Chairman, has the Commission sufficient authority to require a licensee to notify it when the licensee has been informed of substantial irregularities on any of its programs?

Mr. DOERFER. I think so.

Mr. Moss. Has the Commission the authority to impose by rule-making regulations which would prevent fraud or prevent irregularities in presenting programs of skill or knowledge?

Mr. DOERFER. There is a great deal of doubt connected with that, Congressman Moss.

Mr. Moss. You could require that they be honest, could you not?

Mr. DOERFER. Strange to say, I doubt that.

Mr. Moss. Why?

Mr. DOERFER. In the first place, if it is a material intentional misrepresentation of a kind which is cognizable by law, certainly this Commission has power. But if a talent on the air purports to be something different than what he is, he may be absolutely dishonest. Say that he was the veteran of the last World War, probably never get outside of the country or outside of the city he lives in, I don't know just how in the world we could reach all forms of dishonesty.

Mr. Moss. Were you aware in the course of these programs questions were represented to the public as having been authenticated by certain encyclopedias when in fact they were not authenticated?

Mr. DOERFER. I was not aware of that.

Mr. Moss. Could you prevent the broadcast of a statement that the questions used on this program had been authenticated by Encyclopedia Americana when in fact they were not so authenticated?

By rulemaking could you not prevent that type of misrepresentation to the public?

Mr. DOERFER. I think it is doubtful.

Mr. Moss. Why?

Mr. DOERFER. You are dealing here with a license. We are not dealing with a right.

Mr. Moss. I have heard it mentioned and a careful equating of this right with the right of the press. There is no comparison at all. We have no authority in this Congress nor in any Commission to license the use of the press. But we have a clear authority, by law to license the use of the airwaves. That right to license has never been questioned.

Mr. DOERFER. Section 326 is a bar.

Mr. Moss. Section 326 is a statutory bar to censorship which is prior restraint of content.

I am not talking about that. I am talking about matters of procedural format on the part of programing, and the programing, regardless of whether it is bought from the independent producer, regardless of the source of it, is by law and by regulation the sole matter of the station's responsibility; is it not?

Mr. DOERFER. I tried to say that what we do is look at the overall programing.

Mr. Moss. I am interested now in the type of programs which have been exposed in the testimony before the grand jury and the testimony before this committee as being certainly a fraud upon the public.

Mr. DOERFER. I thought your question—you gave me a specific illustration of a dishonest statement in a program.

Mr. MOSS. All right.

Mr. DOERFER. I tried to say that may be censorship under section 326.

Mr. MOSS. We have plenty of precedent in this field.

Mr. DOERFER. Plenty of what?

Mr. MOSS. The Securities and Exchange Commission can prevent the circulation of statements which it may feel are misleading. It has to exercise in effect almost a censorship in the circulation of such statements.

The Federal Trade Commission has the right to pass upon the content of ads and to require their discontinuance if they are false and misleading. Certainly the statements of a station owner, which are his statements regardless of who may have produced them or contracted for them, has the responsibility; does he not?

Mr. DOERFER. Congressman, the illustrations that you gave me are pure commercializations and obviously the FCC, notwithstanding 326, would have the power to regulate that type of conduct.

I assume that your question had to do with a specific portion of a dramatic presentation or call it an entertainment presentation.

Mr. MOSS. This is a statement purported to be a fact.

The station has questions. It says they have been authenticated. They have not been authenticated.

Mr. DOERFER. Just so we understand each other.

If you are talking about, if we have that knowledge beforehand in this specific thing, we could prohibit it, I doubt it. But I don't want to be misunderstood.

If this is a course of conduct, and if it is a practice obviously the Commission can stop it by threatening either to revoke the license or in a contest give it to somebody else.

Mr. MOSS. You can revoke the license or refuse to renew because of this type of conduct. Then why can you not give advance notice by rule that the conduct will not be countenanced by the Commission?

Mr. DOERFER. I suppose the difficulty there is being specific. We are confined to overall considerations. We just cannot get into the specifics. We can use the specifics to accumulate a pattern.

Mr. MOSS. This was an accumulated pattern that went on for many weeks on a number of programs.

Mr. DOERFER. You mean the encyclopedic reference?

Mr. MOSS. This is one of many. The whole format of the show was fraudulent. It was presented clearly to the public as a contest of knowledge when in fact it was not a contest of knowledge.

Mr. DOERFER. I have no problem there. The Commission would have no difficulty at all if it could establish that this was a pattern of conduct cognizable by the licensee and condoned by him. We have no problem there at all.

Mr. MOSS. It has responsibility for content. Can you not assume, therefore, that he must have been cognizant?

Mr. DOERFER. I doubt whether or not a bare assumption would stand up in court.

Mr. MOSS. He has the responsibility. No one else has.

Mr. DOERFER. I am talking about assumption. I think that the Commission would be obligated to prove.

Mr. MOSS. Prove what?

Mr. DOERFER. It would have to prove knowledge or conspiracy or sufficient time to allow the licensee to make a correction. If the licensee himself is involved over a period of time, you do not need a rule. The Commission can move directly against the licensee.

Mr. Moss. Of course, I am of the opinion after the hearings of this week that if the networks had no knowledge on the basis of all the testimony I have heard, if they had no knowledge of the practices being followed in quiz programs, they were culpably negligent in discharging their responsibilities because we have had testimony from witness after witness that these were the common, the accepted practices of that type of program.

We had testimony that this goes back for many years, over shows which so far have not even been mentioned in the public sessions of this committee. This was an established pattern, so well known, Mr. Chairman, that it was not even necessary for the producers to instruct their staff that a program was controlled; so generally known that they did not even have to instruct as to method. Method was accepted, was followed automatically. Yet we have had a plea that there was no knowledge.

Perhaps there was not. Perhaps there is that degree of naivete in the industry. But on that basis, have they not a responsibility?

Mr. DOERFER. Yes. I think after the Commission studies this record and can come up with a reasoned conclusion that responsible officials of the licensee condoned this practice, it raises a very substantial public interest question.

Mr. Moss. We have been told that you folks investigated. We investigated and we had no great difficulty in developing some rather important testimony.

Did the Commission, in addition to the letters directed to the networks themselves, undertake independently to contact a sampling of contestants to determine whether or not they might support the charges made by one of the contestants?

Mr. DOERFER. No. I am not aware of that.

Mr. Moss. Are you aware that the networks on their investigation merely contacted the producers, the very people against whom the charges were made were asked whether or not the charges were true?

Mr. DOERFER. I understand that the networks did that. Whether or not they talked to talent, I am not aware of. But the Commission went further than that and in a more general way.

As I have indicated, it went to the sponsors, the producers, the advertising agencies. We are trying to get a complete picture of how this thing works.

Mr. Moss. But the charge was that contestants had been fixed and the persons who would have the best knowledge and perhaps respond most willingly would be those contestants themselves. The producers had a stake in keeping it hidden. We can assume that others might have had a stake in keeping it hidden.

We know from the testimony here that some of them even went to the extreme of trying to get minors to lie before the grand jury.

Mr. DOERFER. I would say that the Commission assumed that this thing was proven to the satisfaction of those licensees who stopped the practice.

So far as I am informed, there is only one show which continued, and that was "Tic-Tac-Dough," and I do not know what the circumstances of that are.

Mr. Moss. We know for some period of time, because some people have talked, that "Tic-Tac-Dough" was fixed.

Mr. DOERFER. I was so informed this morning.

Mr. Moss. I do not know whether they merely perfected their system of protecting against fraud, or whether the fix is being handled more expertly.

What efforts has the Commission undertaken to determine the facts and by a rule to require a standard of conduct on these shows.

I am not talking of content. This does not come under 326, but to insure a standard of conduct which will not permit the continued presentation of fraudulent shows to the American viewing public.

Mr. DOERFER. The Commission got from the networks a statement of procedures whereby they undertake to prevent this type of thing. They got that within a matter of weeks.

Mr. Moss. Is the Commission aware of the fact that at least one network appeared to have knowledge a year before the grand jury interested itself in the fact that a charge of ethics had been made?

Mr. DOERFER. I had no personal knowledge. May I check with my staff?

Without repeating the statement, the Stempel situation was one.

Mr. Moss. That is the one I was referring to.

Mr. DOERFER. In 1957, I am advised that he, Stempel, made known to the network—whatever it was, some irregularity—and the network advised the Commission that it undertook to contact the producer who, I think, filed an affidavit.

But in any event, the producer apparently satisfied the network involved that there was no substance to that allegation. I am not aware that the Commission was advised.

Mr. Moss. I think the Commission should have been advised and I think in the future the Commission should by rule require that it be advised of any such charges, so that we will not have these prolonged periods when fraud continues to be practiced on the public.

Do you have the month in 1957 when the Stempel charges were brought to the attention of the network?

Mr. DOERFER. NBC said that Stempel's charges had first been brought to the attention of NBC in September 1957, when NBC investigated the charges and ascertained from Mr. Enright that Mr. Stempel had admitted to Mr. Enright the untruth of the charges and had signed a statement to that effect.

On learning of the Snodgrass charges before the grand jury, NBC stated that it immediately commenced an investigation. NBC said that Messrs. Barry and Enright and their employees engaged in the production of "Twenty-one" each made an affidavit that he or she had never given Mr. Snodgrass any questions or answers or any other information concerning such questions or answers or any other information concerning such questions or answers to be used on a telecast at any time.

Mr. Moss. Mr. Chairman, subsequent developments have proven that the charges of both Mr. Stempel and Mr. Snodgrass were correct charges.

Mr. DOERFER. Yes.

Mr. Moss. Would the Commission in the future feel that it could go only to the network if a reoccurrence might develop and rely upon the network statement as being a sufficient investigation, or would it feel that the investigation would have to go beyond that.

Mr. DOERFER. No. I think if the Commission had known about this statement that it would have the power and the duty to contact Stempel and Enright and whoever the other individual is, Barry. My recollection is that these people at that time were independent producers.

Mr. Moss. I know they are independent producers. I recognize that the Commission has no authority to regulate by any method directly, the activities of independent producers, but every one of these shows finally goes out over the facilities of a licensee and working back from that point the Commission can prescribe, certainly, minimum standards to insure against fraudulent dishonesty—whether legally or not—but substantially fraudulent or dishonest types of shows to the American public; can't it?

Mr. DOERFER. I am inclined to think that the Commission could adopt a rule whereby if somebody purporting to have knowledge and is a reliable informant, and advises and informs the licensee of some irregularity that the Commission could require the licensee to convey that information to the Commission; yes.

Mr. Moss. Could it not prescribe standards which would prevent—and we have had some suggestions as to steps which might prevent the fixing of shows—could it not prescribe standards of conduct to govern shows of skill or knowledge?

Mr. DOERFER. I think that the network or the licensee himself could prescribe a *modus operandi*, which upon submission to the Commission, and after it was convinced that it would be effectively a protection against the reoccurrence of that type of thing, could be approved. I doubt very much that the Commission has that type of expertise—

Mr. Moss. I am talking about the authority, not the expertise.

Mr. DOERFER. I am talking about the Commission's ability to so supervise the production of a program as to cull out this type of thing without perhaps—

Mr. Moss. I am not talking of the mere writing of certain minimum standards, which would have to be met in the presentation over the air waves of programs of this type. I am not going to the question of expertise. I am not going to the question of direct supervision, merely the drafting, through rulemaking, of certain standards which would have to be met.

Has not the Commission that type of authority?

Mr. DOERFER. As I tried to indicate before, that is precisely what the Commission is undertaking to study. That involves, again, a consideration of the law. It is entirely useless to draft standards which would have no legal foundation or support.

Mr. Moss. Regulating in the public interest could not require that the public be protected against fraud.

Mr. DOERFER. Mr. Moss, I think there are a lot of things that the Commission would desire would be done in the public interest, but it does not have the power to compel.

Mr. Moss. I am not minimizing the difficulty in this situation at all. But we keep getting the question of whether or not this would be legally permissible. After all, only the courts can finally tell us that. They are not going to be able to test whether or not it is a proper use of the Commission's powers until the Commission has made the rule and it has been taken or challenged by someone to the courts and the courts have spoken out.

There is certainly a need for something to be done and a prolonged period of doing nothing is not the answer. A too lenient period of study is not the answer.

Mr. DOERFER. I would say that was true if the practice were being continued during the study.

Mr. Moss. We do not know. I have heard so much testimony in the past week from people who I can most charitably say have been less than candid to the committee, that I am not convinced of anything now except the facts of the charges which have been made before us.

I do not know whether practices of this type are continued. I would like to have the assurance, but I have not at the moment.

Mr. DOERFER. I do not know how we could do it any other than merely continue the investigation and take what you people have turned up here. Again, as I have indicated, even a rule would have to be subjected to public notice and comment.

Mr. Moss. I recognize that.

That is all, Mr. Chairman. I will yield back to Mr. Flynt and thank him for his indulgence.

Mr. FLYNT. Mr. Doerfer, do you have any Communication Commission personnel that are assigned to monitoring programs, either spot checking or constant?

Mr. DOERFER. Not programs for program content. We have monitors merely for the electrical interference or violation of rules with respect to power, frequency drifting, things to do with the mechanical operation of the transmitter. We do not have monitors per se and do very little of it. We don't have the manpower. As a matter of fact, our renewal division, with respect to examining the program reports of about 4,400 broadcasting stations is handled by less than six people, most of whom are only part time or devote only part time to that type of thing.

Mr. FLYNT. We are always glad to receive reports from you of such conditions and I think you will admit that the Congress has been very fair in helping to remedy those situations when they are brought to our attention.

Mr. DOERFER. Yes; I would say that. Of course, throughout the history of the Commission this has been no effort at all, apparently because of the obstacles which I have indicated, to build up a substantial staff to monitor and evaluate programs.

Mr. FLYNT. Incidentally, I want to commend you for the action you described a few minutes ago. I certainly think that some surveillance should be considered a part of the duties, unofficial though they may be, of the personnel of the Federal Communications Commission if they are to continue to act in the public interest, which I have full confidence that you and other members of the Commission and the staff want to do.

In that same connection, I was pleased a few minutes ago to note the presence here of one other Commissioner—at least one other, there may be others that I have not seen—and on a matter of this importance and of this magnitude, it seems that there might have been a little more interest displayed by certain other personnel to have been interested enough to voluntarily accompany you here today, whether you asked them to or not.

Mr. DOERFER. That probably is my responsibility. I did not notify them. I didn't know until yesterday that I would be expected to testify or have a Commissioner here Saturday. We do have two Commissioners out of the country negotiating international agreements regarding the radio spectrum.

Mr. FLYNT. I will ask you this question: Do you not think that the public interest would have been better served, and that public confidence in the Federal Communications Commission would have been enhanced if the necessity of this committee going into this very subject had been eliminated by a vigilant investigation by the Federal Communications Commission?

Mr. DOERFER. On the contrary. I think this investigation being conducted by this committee in this manner is very salutary. It is time for this country to appreciate and realize the difficulties that the FCC is working under. It does not have the power to do what much of the public thinks it should do. If we can find it and if this committee can help us find it I certainly would join in.

Mr. FLYNT. You told us a few minutes ago, very frankly—and I think everything contained in your prepared paper as well as your responses to questions, have been absolutely and completely frank—in view of the fact that the Commission by your own statement had knowledge of the Stempel charges and allegations, and the Commission apparently decided that it did not have the authority under existing law to take necessary and appropriate action, I have not found in any annual report of the Commission requesting that such power be given.

Mr. DOERFER. Of course, we didn't have the Stempel charges, Congressman Flynt. I would say the law itself is apparently fluid. It is changing in emphasis. You appreciate that there is a great deal of liberality expressed by the courts with respect to the freedom of expression on the stage and in the press and in novels. When the courts have intimated that the radio is in the same category, it is with a great deal of consternation and perhaps the Commission has been faltering, but these are definite stumbling blocks which the public does not see.

Mr. FLYNT. I agree with most of what you have just said, except this: When you make the analogy between the freedom of expression in the press. That is, of course, a specific guarantee written into the Constitution in language just as plain or words just as plain as the English language can make them.

On the question of expressions on the stage particularly—I won't go into the screen, I will leave it out of this particular statement—on the question of what goes on in the stage is a matter for the State courts where the stage presentation is made. But on the question of the use of the airwaves and of television and radio broadcast facilities the responsibility to either take necessary action or ask for a change in

the law to give you the necessary power rests in one place and one place only, and it seems to me that is with the Federal Communications Commission.

Mr. DOERFER. I don't know whether you were present, Congressman, when I read the two citations in which the Supreme Court of the United States indicated there is no difference at all insofar as the first amendment of the Constitution is concerned with respect to different media of mass communications, including radio.

Mr. FLYNT. One of those dealt with a lottery, did it not? I was not present when you read it.

Mr. DOERFER. I will be very glad to do that. They are very brief. This is Superior Films versus the Department of Education. Congress also has power over, so to speak, much of the movies.

Mr. FLYNT. Yes; but the Federal Communications Commission does not.

Mr. DOERFER. The interstate aspect. I would like to hear this language:

Motion pictures are a different medium of expression than the public speech, radio, the stage, the novel, or the magazine; but the first amendment draws no distinction between the various methods of communication ideas.

Here is another case, the *United States-Paramount* case.

We have no doubt that moving pictures like newspapers and radio are included in the press whose freedom is guaranteed by the first amendment.

Now, assuming that a TV quiz type of thing had been a movie production and disseminated throughout the entire country, could the Congress of the United States reach that? That is the question with which we are dealing today. The fact that it uses a public resource doesn't seem to affect what the courts have said in these particular cases.

Mr. FLYNT. But carried to the logical conclusion that same reasoning would say that because of the first amendment that neither the Congress nor the Federal Communications Commission can restrict broadcasters and that anybody can operate whether they go through the formality of getting a license or not. I don't think anybody would go to that conclusion, because of the chaos that might be created.

Mr. DOERFER. Precisely.

Mr. FLYNT. There would be chaotic conditions. As a result of that, the first amendment of the Constitution notwithstanding, the Congress has provided and so far as I know there has never been any challenge of that provision on constitutional grounds, that before anybody can have freedom of expression over the airways he must first come before the Federal Communication Commission to get a license. Is that not so?

Mr. DOERFER. Yes. I would say, however, until that question is squarely presented to the courts, language such as this does cause a good deal of hesitation on the part of the Commission.

Mr. FLYNT. Before the explanation, with which I do not quarrel, basically you agree with my statement: That nobody has ever challenged the constitutionality of the requirement for a licensed broadcaster.

Mr. DOERFER. Nobody has ever what?

Mr. FLYNT. Has ever challenged the constitutionality of the requirement of the prior obtaining of a license to broadcast.

Mr. DOERFER. I think it has been challenged and sustained, that the Commission has the power to issue these licenses.

Mr. FLYNT. That being the case, does not that completely nullify the comparison you have attempted to draw between the freedom of the press and the use of the airwaves by a licensee?

Mr. DOERFER. I don't think so. I think one of the main reasons for the FCC being in existence has to do with bringing order out of chaos because of the electrical interference of the airwaves. If there were sufficient spectral space available I have no doubt at all that radio in the minds of everybody would be considered exactly and precisely as are movies, magazines, newspapers, and novels.

Mr. FLYNT. I find myself in complete disagreement with you there, for this reason: I would rather see complete chaos as far as commercial broadcasting is concerned than see things that tend to further corrupt the morals of the American people without the agency which has the responsibility of preventing and correcting to take the attitude of an ostrich that puts its head in the sand because he doesn't want to do anything about it.

Mr. DOERFER. I don't think it is precisely that. Of course, the Commission never does anything right. If it moves in and attempts to lay a heavy hand on some programing, then it is accused of being bureaucratic and meddling in a field where it has no authority.

Mr. FLYNT. Criticism is always leveled. As a matter of fact, those of us who are seated up here have criticism leveled at us day in and day out. As long as we try to continue to do that which we believe to be right, we just take the position that criticism does not make any difference.

Do you think that anybody could consciously and justifiably criticize you for attempting to prevent something that is morally wrong even though there might be some technicality on which to hang the statement?

Mr. DOERFER. I didn't make that statement that I necessarily am swayed by criticism. I am affected by reasoned criticism where there are some things to be considered.

Mr. FLYNT. Where there is reason for it?

Mr. DOERFER. Yes; where there is reason for it. I wouldn't say the newspapers, but many, many commentators and even cartoonists have ridiculed the Postmaster General because of his action on Lady Chatterly's Lover. We would get the same kind of treatment. We are interfering with freedom of expression. Freedom of the talent or playwright to express himself. Really that doesn't concern me if we had the power. If we had the power clearly, I think this entire Commission would move quicker and more firmly in this particular. But where it has these signposts that say you can't go that far, naturally the Commission slows down and attempts to make a very comprehensive factual study and certainly an analysis of the law.

Mr. FLYNT. I am glad you used the analogy to the signpost because the signpost is a guide only and does not compel the direction in which a traveler will take.

Mr. DOERFER. I don't want this committee to feel that I think that these two paragraphs are the last law on it, because the particular question which we are discussing was not under consideration. Yet, as you know, there is ample authority which says whenever the Supreme Court speaks, everything it says is meaningful.

Mr. FLYNT. Fortunately there are some of us who do not agree with that statement, too. Do you believe that those decisions are correct and that they are in the public interest and that they speak the final law?

Mr. DOERFER. If I were arguing the Lady Chatterly's Lover case in the Southern District of New York, I would pose to that court the direct question, if this is really in the protection of the first amendment, do you mean to say that can be put over the air, over the television network system, and I doubt very much that the court would have come to that conclusion.

Mr. FLYNT. But in the position of chairman of the Federal Communications Commission and the other members as Commissioners, if there is a signpost or a guide that you officially or personally seem to be wrong, is it not the real remedy to come to Congress and ask for additional legislation and authority to do these things?

Mr. DOERFER. I agree. I certainly will do that. Even in this TV business. I don't know. Some of the novels I have seen and some of the novels which are reproduced in the movies I don't know how in the world they can show them over television.

Mr. FLYNT. Let me come back a minute to the decisions we were talking about a while ago because I think this is very important. Do you agree with the legal reasoning contained in those decisions, based on your study and preparation and knowledge of the law?

Mr. DOERFER. No. I can't say I disagree with the reasoning. I would disagree if this reasoning were applied to the television situation. I say that because the court may have been persuaded by the fact that the printed matter is not available unless somebody makes a definite effort to leave the home, to seek it out at a stand and to pick it up. Where this comes into the home almost the whole day, it is a little different situation. A television set cannot have the complete supervision by which a parent may have over the reading material of the children. So I think that the factual situation is different.

Mr. FLYNT. I know you are a good enough lawyer, Mr. Doerfer, and I know your general counsel, Mr. Fitzgerald, is a good enough lawyer, that this reasoning contained in these things so far as the operation of the Federal Communications Commission and of the constitutional authority of the Congress of the United States to regulate and license broadcasters, that that line of reasoning cited by you is nothing more than pure dictum and is not controlling on the Federal Communications Commission at all.

Mr. DOERFER. I didn't cite this as authority for non-action on the part of the Commission. I merely cited this, as I said before, signposts. There are other pronouncements by the Supreme Court which indicate that the Commission has a right to look at the composition of the traffic. But again the precise question was never presented to the court. To repeat again, all that this Commission can do is take the entire, the entire factual situation—not only the reprehensible conduct—but the entire modus operandi with respect to broadcasting programs, study that, get all of the law which it thinks is applicable, lay it side by side and then with the public interest objective decide what in the world can be done.

Mr. FLYNT. There are some other questions I would like to go into but I know everybody, including myself and you, are anxious to get away.

On the question of the alleged investigation of the Stempel charges made by the Federal Communications Commission, for the time being let us consider what has taken place in that regard as water over the dam on the "Twenty-One" show. But in the future, if the Federal Communications Commission directed an inquiry to a network and the network responded that they had contacted only the persons against whom the charges had been brought, would you be satisfied with such a report as that or would you require further action, and independent action?

Mr. DOERFER. I think that the situation really triggered over a much broader scope of investigation.

Mr. FLYNT. I know that. That is not my question. In the future, would you take independent action by the Commission?

Mr. DOERFER. I hate to open up another subject. I am talking about Commission action. I am talking about a prompt block. Calling in a broadcaster, telling him a certain charge is being made with respect to what a disk jockey had done on the air, I subjected myself immediately to a charge either of pre-judging this thing or receiving ex parte representation even before the matter was in hearing. We have a case today in which I am accused of an ex parte representation, it is pending there, because a broadcaster, an applicant, before he got the license came to me and indicated to me how he was going to be blocked by another broadcaster. This broadcaster now is charging that I listened ex parte to the merits of a case which I should have known was going to be thrown in a hearing. That is a substantial block to any Commissioner plus the Commission as a body to move in matters of this kind.

Mr. FLYNT. In some respects, though, you will have to admit, I think, that the Federal Communications Commission bears some of the functions and responsibilities of a district attorney or public prosecutor.

Mr. DOERFER. I do, indeed.

Mr. FLYNT. If a prosecuting attorney, when he received a report of a crime, whether in the form of a sworn complaint which we sometimes call criminal warrant, or a complaint transmitted to him by other means, don't you believe that if the prosecutor interviewed only the people against whom the charges were brought that he would be accused of the worst whitewash operation in the world, and wouldn't he be guilty of a whitewash operation if he only went to the people against whom the charges were made?

Mr. DOERFER. No, I don't think so. I think if he has enough information and evidence there to sustain his theory of the case, whether it be for conviction or acquittal, that would not be whitewashing. I don't think the analogy is valid because when a prosecuting attorney has information that there has been a crime committed, it is his duty to proceed to see that the dignity of the state is vindicated. However, our job is primarily to see that this particular objectionable action ceases and desists. There is the difference.

Mr. FLYNT. Isn't the prosecutor's first duty to at least interview the man who made the charges rather than the defendant?

Mr. DOERFER. If they were satisfied that the truth of what the complainant had made is in question, I don't think any member of the staff doubted for one moment that this particular conduct must have

happened because the networks immediately ceased it before they completed their investigation.

Mr. FLYNT. Only to the fact that it was reported to the networks in 1957 and it was more than a year before the action was taken.

Mr. DOERFER. That is information to the networks which I am not aware of came to the Commission at all. No doubt there are many things that are happening in the broadcasting field which are quite reprehensible which this Commission knows nothing about.

Mr. FLYNT. If you received a complaint wouldn't you undertake to investigate it?

Mr. DOERFER. We just get thousands of complaints. We could not staff ourselves down there to thoroughly investigate all those complaints.

Mr. FLYNT. You do the best you can.

Mr. DOERFER. We do the best we can. We probably make a mistake in judgment with respect to the priority of some of them. Like any large agency we get complaints from crackpots, disgruntled people and from some very serious-minded people. It is pretty hard sometimes to sit there and have a staff man appraise those things and for the Commission to determine to what extent it will direct or divert its energies.

As you know, we have a terrific responsibility in the fields outside of the broadcasting fields. Five hundred thousand licenses is quite a clientele to regulate, I would say.

Mr. FLYNT. Mr. Chairman, I thank you again for your appearance here and for the very frank answers you have given to a very lengthy interrogation.

Mr. DOERFER. Not at all. I am awfully glad that this whole thing is going to receive careful consideration.

The CHAIRMAN. Mr. Doerfer, I had a good many questions myself at the outset, but I think everything has been amply covered.

Mr. DOERFER. I didn't mean to filibuster the committee.

The CHAIRMAN. You have not consumed any more time proportionately than the others who have been participating. I must confess that I am still left in somewhat of a confused status as to what, if any, the authority under the law is. I am just about at the conclusion that there needs to be some specific legislation on this problem. Your statements which you gave a while ago I thought would be appropriate at the outset of the cooperation of the Commission in developing the kind of legislation that we ought to have is appreciated and we will welcome that assistance.

Sorry to have kept you here so late. I regret that I have had to stay here so late myself. It is much later than I expected it would take.

Nevertheless, I think the entire discussion has been very helpful, trying to decide what legislation is needed in this field. So with the thanks of the committee, to you and to members of your staff, and I know Commissioner Lee was back there a while ago, we are glad to have him present, we apologize to have you here on Saturday.

Mr. DOERFER. None is necessary.

The CHAIRMAN. We could not get to the questions because of the other program. Our schedule will be pretty heavy for the remaining day we have, next Monday. We do appreciate your coming up here on what is supposed to be your off-day.

With the thanks of the committee. The committee will adjourn until Monday morning at 10 o'clock, at which time we will have the Federal Trade Commission.

(Whereupon, at 1:45 p.m. the committee was recessed, to reconvene at 10 a.m. Monday, October 12, 1959.)



INVESTIGATION OF TELEVISION QUIZ SHOWS

MONDAY, OCTOBER 12, 1959

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The special subcommittee met at 10 a.m., in the caucus room, Old House Office Building, Hon. Oren Harris (chairman) presiding.

Present: Representatives Harris, Mack of Illinois, Rogers of Texas, Flynt, and Springer.

Also present: Robert W. Lishman, counsel to the subcommittee; Beverly M. Coleman, subcommittee principal attorney; Charles P. Howze, subcommittee attorney; Hugh M. Hall, subcommittee special consultant; Herman Clay Beasley, subcommittee clerk; and Jack Marshall Stark, minority counsel.

The CHAIRMAN. The committee will be in order.

This morning we have as witness Mr. Kintner, Chairman of the Federal Trade Commission. The letter from me to Mr. Kintner of August 18, and his reply of September 3, 1959, regarding the views of the Federal Trade Commission as to the adequacy of present law on so-called quiz shows, prize contest television programs, and so forth, was included in the record at the outset of the hearings. Mr. Kintner is here to further amplify the view of the Commission with reference to present law and its application, or lack of law, on this particular problem. That, of course, is a most important adjunct to this whole investigation. It is the legislative purpose here to meet a problem which has developed, and is being developed, in connection with this entire matter.

First, with that explanation, Mr. Kintner, will you be sworn. Do you solemnly swear—

Are you going to use either of the other aides?

Mr. KINTNER. I may ask that other members of the Commission staff respond to questions. I am not aware of the scope of your inquiry this morning so I have with me the staff people who have detailed information with respect to various areas of the work of the Commission.

The CHAIRMAN. We will probably get to them later.

Do you solemnly swear the testimony you will give to this committee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KINTNER. I do.

The CHAIRMAN. Will you state your name for the record.

TESTIMONY OF EARL W. KINTNER, CHAIRMAN; ACCOMPANIED BY HARRY A. BABCOCK, EXECUTIVE DIRECTOR; DANIEL J. McCauley, JR., GENERAL COUNSEL; SHERMAN R. HILL, DIRECTOR, BUREAU OF INVESTIGATION; CHARLES R. MOORE, LEGAL ADVISER TO BUREAU OF INVESTIGATION; CHARLES J. CONNOLLY, LEGAL ADVISER, RADIO AND TV ADVERTISING; FRANK C. McALEER, ASSISTANT TO GENERAL COUNSEL, FEDERAL TRADE COMMISSION

Mr. KINTNER. My name is Earl W. Kintner. I am Chairman of the Federal Trade Commission. Mr. Chairman, I am accompanied here this morning by Mr. Daniel J. McCauley, Jr., the General Counsel, who is immediately on my right, and on his right, Harry A. Babcock, the Commission's Executive Director. Behind me are Frank C. McAleer, Assistant to the General Counsel; Sherman R. Hill, Director of the Bureau of Investigation; Charles R. Moore, Legal Adviser to the Bureau of Investigation; and Charles J. Connolly, Legal Adviser for Radio and Television Advertising. I brought these gentlemen with me in the event the committee might wish more detailed information concerning the operations of their respective areas than I might be able to supply as the Commission's Chairman.

I appear here without a prepared statement in the interest of being as helpful as possible to this committee and giving it whatever information along whatever lines of inquiry it may wish to pursue this morning. It might be helpful, Mr. Chairman, to read again the letter of September 3, 1959. Does the Chairman desire that that letter be read?

The CHAIRMAN. I think it is already in the record, Mr. Kintner. I believe all members have read it.

Mr. KINTNER. Very well.

The CHAIRMAN. We have had it here before us now for a week. If you would like for that to be restated, along with any comments or questions you might have, you may proceed.

Mr. KINTNER. I have an additional supplemental letter to this concerning certain information that was developed in the preparation for this hearing in the last few days that might require some reference to the earlier letter. If I might read the two of them into the record, I think that would be helpful.

The CHAIRMAN. Very well.

Mr. KINTNER. On September 3, 1959, I addressed you as follows:

DEAR MR. CHAIRMAN: This is in further response to your letter of August 18, 1959, regarding prize contest television programs in situations where arranged contests are falsely represented to the public as honest tests of skill. You inquire as to the nature and extent of the Federal Trade Commission's jurisdiction over such programs and over the persons responsible therefor.

Your letter recites that, while there may have been no misrepresentation of products advertised, millions of persons were deceived into viewing and hearing advertisements with resultant increases in the sales of products so advertised to the disadvantage of competing products.

The Commission has made no investigation of the matters to which you refer and, consequently, is not in a position to evaluate the responsibility of those whose products were advertised or the nature of the programs on which the advertisements were presented. In any event, the Commission has not exercised jurisdiction with respect to practices of the kind related in your letter

and, in my opinion, there is a serious question as to whether such jurisdiction exists.

The pertinent provision of law to be considered is section 5 of the Federal Trade Commission Act which prohibits "unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce." Under that section the Commission on many occasions has proceeded against false and deceptive advertising. However, the situation related by your letter does not involve any false or deceptive advertising but rather what may be termed "deceptive entertainment" in the course of which advertisements, which are not challenged, were made.

In the leading case of the *Federal Trade Commission v. R. F. Keppel & Bro.*, 291 U.S. 304 (1934), the Commission was sustained in ordering a manufacturer to cease and desist selling its candy products in packages so arranged as to induce the resale of such candy by a game of chance. In that case the practice prohibited was directly connected with the merchandising of the product and the "game of chance" aspect was deemed an unfair method of competition on the following basis:

"* * * It is true that the statute does not authorize regulation which has no purpose other than that of relieving merchants from troublesome competition or of censoring the morals of businessmen. But here the competitive method is shown to exploit consumers, children, who are unable to protect themselves. It employed a device whereby the amount of return they receive from the expenditure of money is made to depend upon chance. Such devices have met with condemnation throughout the community. Without inquiring whether, as respondent contends, the criminal statutes imposing penalties on gambling, lotteries and the like, fail to reach this particular practice in most or any of the States, it is clear that the practice is of the sort which the common law and criminal statutes have long deemed contrary to public policy."

The situation which you have described differs from the principles under which the *Keppel* case was decided in that "deceptive entertainment" constitutes simply the surrounding circumstances during which the nondeceptive advertisements were made, is not an intricate part of the sale and does not itself exploit customers who are unable to protect themselves in the sense that the game of chance appealed to children. Neither can it be said that "deceptive entertainment" has long been deemed contrary to public policy by the common law and criminal statutes.

The case of *Northam Warren Corp. v. Federal Trade Commission*, 59 F. 2d 196 (C.A. 2, 1932), involved a Commission proceeding with respect to undisclosed circumstances surrounding the making of representations concerning particular products. The situation was that a manufacturer of toilet articles had paid certain well-known persons of the theater and social life considerable sums of money for testimonials. The Commission had not challenged the truthfulness of the testimonials, but found that the failure to disclose that payment had been made for the testimonials constituted an unfair method of competition under the Federal Trade Commission Act. This case is comparable to the situation described in your letter inasmuch as the Commission's complaint was directed at the means whereby the public's attention was directed to testimonials or advertisements and an undisclosed situation existing in connection therewith, rather than the truth or falsity of the testimonials or advertisements themselves.

The court of appeals in the *Northam Warren* case held that, inasmuch as there were no misrepresentations as to the products involved, the Commission was without jurisdiction. In the course of so holding, the court stated:

"The Federal Trade Commission Act (15 USCA ss. 41-51) does not purport to establish a decalogue of good business manners or morals * * *. Even if a practice may be regarded as unethical, it would still be beyond the purview of the act if it lacks the public interest necessary to support the Commission's jurisdiction * * *. The strongest argument the respondent makes is that failure to state the price paid for the testimonial amounts to deception and misrepresentation concerning the petitioner's product and in that way the petitioner is able to deprive honest manufacturers of a market. *Federal Trade Comm. v. Winsted Hosiery Co.*, 258, U.S. 483, 42 S. Ct. 384, 66 L. Ed. 729. But where unlawful restraint of trade has been ordered to be discontinued it has always appeared that there was some dishonesty in labeling or marketing the goods * * *."

In both the *Keppel* and *Northam Warren* cases referred to above, the courts were concerned with the extent to which the Commission should attempt to

censor the morals of businessmen. This question of censorship is of vital consideration in appraising the Commission's jurisdiction over the "deceptive entertainment" described by your letter. If the Commission were to assert jurisdiction over entertainment, it would be difficult to set a limit at which this censorship should stop. For example, some States do not allow wrestling matches except when billed as exhibitions rather than as contests. The Commission has not had occasion to investigate the matter and has no information as to whether, in fact, wrestling matches are true contests of skill or planned exhibitions. However, if the Commission were to exercise jurisdiction over "deceptive entertainment," it would consequently be appropriate to investigate the true nature of wrestling matches presented over television during which commercials of sponsors are presented to the public.

The Commission's jurisdiction would not stop at "deceptive entertainment" but would logically have to continue to a complete censorship of all such entertainment. This would take the Commission far afield from what are presently conceived to be its delegated functions.

I do not believe that by enactment of the Federal Trade Commission Act the Congress intended the Commission to become censors of television entertainment. In fact, the Federal Communications Commission, which has a much more direct statutory authority over radio and television transmission, is specifically foreclosed by statute from exercising "the power of censorship over the radio communications or signals transmitted by any radio station." (47 U.S.C. 326.)

I am, therefore, of the opinion that, absent a clear directive by the Congress, the Commission is not authorized to exercise its section 5 Federal Trade Commission Act jurisdiction over situations such as that described in your letter.

That represented my personal views on this problem.

The CHAIRMAN. You said that represents your personal views?

Mr. KINTNER. Yes, sir.

The CHAIRMAN. Does this represent the Commission view?

Mr. KINTNER. So far as, as its Chairman, I can speak for the Commission, it does represent the Commission's view. As I understand it, it is the prevailing view of the staff. The staff prepared this letter for my signature, which brings me to a second letter that I wish to read in the record today, and submit to you under date of October 12, 1959. In connection with preparing me for this appearance here today, the staff discovered that contrary to what they had advised me there had been one staff level investigation into this industry having some bearing on the practices here involved. The matter never reached the attention of the Commission itself, and the staff people who had prepared the letter were not aware at the time the letter I have just read was prepared, that such investigation had been made.

My letter of October 12 is addressed to you, Mr. Chairman, and reads as follows:

My letter of September 3, 1959, in response to your inquiry of August 18, 1959, I expressed my opinion as to the nature and extent of the jurisdiction of the Federal Trade Commission over prize contest television programs in situations where arranged contests are falsely represented to the public as honest contests of skill.

In the course of that letter, I indicated that the Commission had made no investigation of such a matter and had not exercised jurisdiction with respect to such an alleged practice.

It has since come to my attention, in fact just this past Friday, that the Commission's staff did investigate a complaint received in December 1956, to the effect that a television quiz program was being conducted other than as a true test of skill between contestants. This complaint was investigated on direction of our Bureau of Investigation by our New York office, which concluded after investigation that the allegations were unsupported by evidence. The program in question had gone off the air, no other complaints had been received regarding that program or any other programs produced by the parties complained of and the executive producer of the show submitted an affidavit which averred that the producing corporation "has not represented in the past and will not in the future

represent that any quiz program which it produces is spontaneous and unrehearsed when such is not the case. * * * has not represented in the past and will not represent in the future that any of the questions used on such quiz programs have been prepared or approved by any person, organization, or institution when such is not the case. * * * has not represented in the past and will not in the future represent that questions used on such quiz programs have not been seen beforehand by persons not connected with the program who have in fact seen such questions."

In view of the foregoing, on May 6, 1958, in accordance with operating procedures of the Commission, this matter was closed by the Commission's staff.

I would appreciate it if you would insert this letter into the record of hearing immediately following my previous letter of September 3, 1959, as a modification thereof.

The CHAIRMAN. I wonder if we may have a copy of the letter.

Mr. KINTNER. I have the original for you, sir. Many of our thousands of matters did not, of course, reach the attention of the full Commission. In many instances where there is a cessation of the practice in question a letter of discontinuance is received, if the instance is minor, and in some cases the staff will take an affidavit of discontinuance, if the matter is minor and appears to have been adjusted. This is one of the instances.

The CHAIRMAN. Is there any reason why you should not identify the program?

Mr. KINTNER. Not at all, Mr. Chairman. I should say further that the files in this matter will be made freely available to your staff. For obvious reasons I don't think all of the material is relevant. It might disclose some of our investigative methods but we are very happy to have the staff examine these files. I am glad to say that the program in question was the "Big Surprise." The allegation was made by a lady contestant that in connection with the warming up session the operators of the "Big Surprise" program were learning where she might be unable to answer questions and they used this information, she alleged, to choke her off at the appropriate time during the program. I believe at the time our staff looked into this matter, there was pending in the State of New York a private litigation filed by the same lady against the producers of the program. By the time we had looked into the program, it had gone off the air.

The CHAIRMAN. We have had some testimony on that particular show, I might say, without commenting further on what the testimony was.

Mr. KINTNER. I don't know whether this is particularly relevant, but it was in connection with the warming up process preceding the contest. As I have indicated, the lady alleged that the warming up process permitted the producers to decide where she was vulnerable and thus choke her off whenever they wished.

The CHAIRMAN. Did you have a further statement you wished to make?

Mr. KINTNER. I am prepared, sir, to discuss our relations with the Federal Communications Commission.

The CHAIRMAN. Before we get into that, there are two things about this that are of interest to me. No. 1, I assume when your investigators learned that the show was no longer on the air, and you had this information you have just disclosed, that you decided to pursue the matter no further?

Mr. KINTNER. That is correct, except as often happens in instances like that, where the practice has been abandoned, the staff sometimes takes a letter for the file indicating the practice has been abandoned and assurances that it will not be renewed. In this instance the assurances went further than usual in that an affidavit of the executive director of the program was secured for the files.

The CHAIRMAN. The next question, and the heart of the hearing this morning and last Saturday, relates to the adequacy of present laws in dealing with such problems. I realize the fact that you, yourself, were not acquainted with this matter in 1956.

Mr. KINTNER. That is correct.

The CHAIRMAN. Because it has just been called to your attention. Under what authority or procedure did the staff feel inclined that it should investigate?

Mr. KINTNER. The staff made a preliminary investigation. That is all this was, Mr. Chairman. In effect, a preliminary investigation, as a possible violation of our section 5 of the Federal Trade Commission Act. But since the practice had been abandoned we never got to the question of determining whether we had jurisdiction. We often make such investigations to get facts to determine whether indeed we do have jurisdiction. Then at that time if it appears that corrective action by the Commission is necessary, the Commission itself, when the matter is called to its attention, determines before it takes corrective action whether or not it has jurisdiction.

The CHAIRMAN. In other words, No. 1, your investigation was rather limited, and No. 2, you never reached the point where it was necessary for the Commission to make a determination as to present law for handling such matter if, in fact, it had been fully developed.

Mr. KINTNER. Yes, sir. That is correct. The Commission itself has never considered a case involving any of these matters for the purpose of determining jurisdiction. I would say that a fair characterization is that we would find some differences of opinion on the staff level. There were two of the people who investigated this matter who felt that we had jurisdiction. One of them cites the same cases as I cite to indicate we do not have jurisdiction. Probably the fairest characterization of the whole situation is that it represents a gray area in the law. The main thrust of the cases in the past has been against jurisdiction in situations of this sort. We had, for example, the *New Jersey Asbestos Company v. Federal Trade Commission*, a 1920 case. In that case the Commission had sought to find a violation of section 5 by reason of a businessman paying of the employees of his customers, or rather than paying, providing liquor, cigars, meals, theater tickets, and so forth, for the purpose of influencing the employees of his customers. It was the Commission's theory at this time that this was an unfair method of competition in that it unfairly diverted business from businessmen who were not engaged in those practices. The Second Circuit Court of Appeals in a decision held that the court takes judicial notice that the practice of entertaining customers and employees of customers by furnishing them liquor, cigars, meals, theater tickets, and so forth, found by the Federal Trade Commission to be an unfair practice, has been an incident of business from time immemorial. This is another indication.

The CHAIRMAN. It sort of gets into the same general problem we were in last year, does it not?

Mr. KINTNER. I am afraid it does. We have also had two cases in which we sought to attack books which disseminated what we thought were fraudulent and deceptive statements concerning products. One such case was the *Scientific Living* case—I mean *Scientific Manufacturing* case—and in that case the manufacturer of aluminum ware was disseminating a book in which the author said that users of aluminum ware would be poisoned if they used it. This, of course, is quite incorrect as we have since demonstrated in other cases involving direct advertising, but the court would not let us prohibit the sale of that book. They said we were going beyond the bounds of our authority, to eliminate deceptive advertising. In another case, the Koch——

Mr. LISHMAN. Could we have the dates of these cases?

The CHAIRMAN. Just a minute. I will get to these questions.

Mr. KINTNER. We will supply that citation, Mr. Lishman. I don't have it at hand. (Citation later supplied: 206 F. 2d 311.)

The CHAIRMAN. You have the one you just referred to before you. What is the date of it?

Mr. KINTNER. The Koch case was decided July 8, 1953.

The CHAIRMAN. No, the one you read a while ago when you first opened the book.

Mr. KINTNER. I don't have the citation.

The CHAIRMAN. You just read it from the book.

Mr. KINTNER. The other case is 264 Fed. 509. That is the *New Jersey Asbestos* case, Mr. Lishman, decided February 26, 1920.

The *Scientific Manufacturing* case; I do not have the citation. It was just called to my attention here in this hearing room. We will supply the citation to that. (Citation later supplied: 124 Fed. 604.)

The CHAIRMAN. Do you have the reference to it?

Mr. KINTNER. We will have to supply the reference.

The CHAIRMAN. You don't even have the reference? You don't know whether it was earlier or whether it was later?

Mr. KINTNER. I am advised it was about a 1938 or 1940 case. We will supply that.

The CHAIRMAN. The point is, you referred to the basic decision, which you just read, in 1920. Did the Wheeler Act of 1932 take care—I mean 1938, or whenever it was—of the decisions which you have just referred to?

Mr. KINTNER. The Wheeler-Lee Act did spell out in some detail the practices and added the words "unfair or deceptive acts or practices," broadening the unfair methods of competition language of our statute.

The CHAIRMAN. Do you feel that the Wheeler-Lee Act was sufficient to meet the problem raised in the 1920 decision?

Mr. KINTNER. No.

The CHAIRMAN. You do not think that is true?

Mr. KINTNER. No, sir; I do not. As a matter of fact, there was a later case almost similar in facts, the *William F. Koch* case. That was a 1953 case decided in the U.S. Court of Appeals. I will have to supply the book and page of that. I can give Mr. Lishman a printed copy. In that case the respondent was both falsely advertising, in conventional advertising, that he had a remedy which cured cancer, gonorrhea, and many other infectious diseases, and then had

a book written by a person who made the same representations. He wrote the book himself. He was an M.D. who wrote the book himself. He touted his product and its efficacy for curing cancer and gonorrhea and many other infectious diseases, not only in his advertising, but in his book. The Court of Appeals for the Second Circuit sustained us on the prohibition—the sixth circuit—against the dissemination of the advertising, but would not permit us to prohibit the sale of the book.

The CHAIRMAN. The upshot of the whole thing—we probably could argue about these cases around here on ad infinitum and be here from now on out—the Commission and the staff feel, that there is not sufficient law to deal with this kind of problem, insofar as the Federal Trade Commission is concerned?

Mr. KINTNER. Yes, sir. There is some difference of opinion on the staff. Mr. Harris, as you know from your long experience with the Trade Commission and its law, unfair methods of competition is a pretty broad statute.

The CHAIRMAN. Yes, I know that.

Mr. KINTNER. But the courts, as I have indicated, have pretty well advised us that we ought to stick to the illegal practice itself, and not go into the area of morals and good taste of businessmen.

The CHAIRMAN. The Commission feels, regardless of the division and thinking within the staff, that this is the present situation?

Mr. KINTNER. We have never had a case submitted to the full Commission on this. I don't want it understood by you, sir, that I am speaking for my four colleagues who are not here. It is my judgment that the best that can be said here is that there is a gray area, and basing my judgment as a lawyer upon past cases, that it is doubtful whether the courts would permit us to go too far into this jurisdiction.

The CHAIRMAN. You can well understand the position and the purpose of this subcommittee, that it is not necessarily to suggest a criticism of the Federal Trade Commission, as such. If we find there is a very positive feeling on behalf of the Commission, and those who have to deal with these problems, that the laws are not adequate to cover them, that is the point. We are trying to find out, first; what happened in connection with these things, and develop the facts; and then see if there is need for legislation. Do you feel that there is need for legislation in this field? I am not talking specifically about the Federal Trade Commission. I am talking about legislation.

Mr. KINTNER. This is for the Congress. I would say that legislation certainly would be the sure way of handling the problem. In that connection you could make it a criminal offense if anyone rigged a television program. I have no doubt that that would have a salutary effect, and perhaps eliminate future difficulty of this nature. You could, of course, provide for broader rulemaking authority. If you do this, I would suggest that the authority be given to the Federal Communications Commission, which has primary jurisdiction in this field.

The CHAIRMAN. My offhand opinion on that, right now—I do not want to draw hasty conclusions on the matter—that broader rulemaking authority which thus far has not had a disposition to deal with this matter, would be just spinning the wheel.

Mr. KINTNER. That is a decision that you and the committee will have to make.

I have just one other suggestion to you. In this I am very serious.

Since I became Chairman of the Federal Trade Commission in June I have appeared before business groups on several occasions and urged that those business groups assume their individual responsibility for law enforcement. They have as great a responsibility for insuring that ethical practices exist in their industries, that they adhere to the law, as we in the Government have responsibility for a vigorous enforcement of the laws. It is coincidence that at a meeting or installation of a Federal Bar Association chapter in Pittsburgh Friday night, I attempted to set out my statement of beliefs in summary of many of these talks that I have been making. With your permission, I would like to read this very brief statement. I think it is relevant here with respect to the problem that has arisen in the television industry. I said this, Mr. Chairman:

On becoming chairman of the Federal Trade Commission last June, I summed up my philosophy toward antitrust and trade regulation in these words:

"I believe in the vigorous enforcement of the laws, coupled with a maximum effort to encourage voluntary adherence to the laws by the business community. I believe that the Commission in all its actions should accord those it regulates a maximum of fairness and due process."

Freewheelers in business might misinterpret this promise of law enforcement as mere piety. The reason is they belong to the predatory business class that sees the Federal Trade Commission as a small, ineffectual, understaffed agency in the sleepy town of Washington, far away. They justify any illegal practice they might engage in on grounds that their competitors are doing it, or would if they had been smart enough to think of it first.

But let them be victimized by predatory practices, and they look to the Federal Trade Commission as the only lighthouse on a stormy sea, while Washington comes as close as the telephone at their elbow.

These extremes of viewpoint are both in error. It should be obvious to any modern businessman that Washington is neither a distant hamlet to be ignored, nor a wailing wall for the weak in spirit. It is, instead, a symbol of our system of government which, basically, is a system of self-government. The agencies in Washington, and specifically the Federal Trade Commission, are simply instruments for the protection of this system against those who destroy it by avarice or timidity. We are the referees, not the players, in the game of business. Just as we don't want a game without adequate rules fairly enforced, we also don't want a game whose players are hog-tied with regulations and encumbered with referees.

The answer to this is self-discipline on the part of business. More than any single thing, it will eliminate the need for more law and more government. At the same time, law enforcement must be alert and vigorous enough so that fair dealing never dies with a knife in its back.

It long has puzzled me that an able businessman can be so shortsighted as to spend talent and time trying to circumvent the laws against unfair competition. It is particularly hard to understand because the same man will reveal sound judgment in conducting other phases of his business. He is meticulous in building and maintaining credit, canny in assessing the future wants of his customers, and jealous of his firm's reputation for honesty and service. Yet too often he deludes himself that skirting the law is no more than a mild hazard of the business game.

His competitors are not deluded, and in the long run, neither is the public. A few hot coals of illegality can be extinguished with quick adversary proceedings by the Federal Trade Commission, but if the fire becomes a conflagration, the public, through Congress, will put it out. The charred remains will be another freedom not protected by the self-discipline of individual businessmen.

Mr. Chairman, I have been greatly concerned in my 6 years as General Counsel of the Federal Trade Commission and lately as Chairman of the Commission that businessmen increasingly are coming to

Washington seeking special legislation which will whittle down on their own free enterprise system, their own individual freedoms under which business has grown and the country has grown.

I feel that the answer is self-discipline on the part of the businessman. He is a citizen who owes to his Government and to the public the same degree of adherence to the laws that individual citizens owe with respect to our traffic regulations and other laws of the land.

The CHAIRMAN. Of course, Mr. Kintner, I do not think there would be many people who disagree with you on the fundamentals that you have just stated.

Here is a problem where the businessmen themselves deny that they had any part. This is a method of procedure where the party was a contractor who is not part of the business at all, but developed methods of promoting that type of business, not by advertising but by certain kinds of programs that would interest the people, in an effort to get the advertisers before the people, and all that goes with it, which the businessmen prepare. This is entirely separate and apart from what the businessmen do.

I realize that there are a lot of questions in some people's minds that this cannot go on without all those who are interested up and down the line having had some knowledge of something that has not been developed to the point that it is a fact.

You talk about a gray area here. You talk about a situation where an individual or group or organization is willing to perpetrate fraud and deception on the American people, and questionable laws to deal with it.

Mr. KINTNER. I would say their responsibilities not only extend toward obedience to the laws on the books, but extend also toward protecting the good name of their industry. This is one of the responsibilities of living in a democracy. Businessmen should not sit supinely by until the Government is forced to intervene in a moral situation. Men of conscience, and I think this is true of the great majority of the American businessmen, should find a point where they are willing to say "no" to any practice that is growing up.

I realize that this may be impractical; but I, in recent years, have discovered a growing awareness on the part of businessmen that there must be some individual policing and individual responsibility toward abiding by the law, or else those businessmen realize they will get more and more Federal regulation and more and more laws which will further limit their activities.

The CHAIRMAN. I know I am taking too much time in suggesting these things in this discussion. I imagine some of the other committee members have questions before you get to the relationship between the Federal Communications Commission and your Commission on the problem we have discussed.

Mr. KINTNER. With your permission, I would like to read into the record a minute of the Commission which defines that relationship quite formally. It is a minute of the Commission dated January 10, 1957. It is entitled "Federal Communications Commission, In re: Furnishing of Information Relating to False and Misleading Radio and Television Advertising."

The Commission directed that where a representation or statement disseminated by radio or television forms the basis or partial basis for the issuance of

a complaint, an order to cease and desist or acceptance of a stipulation, the Federal Communications Commission be provided a copy of the complaint, order, or stipulation, together with the call letters and locations of the radio and television stations which are shown by the files to have broadcast the questioned representations.

Where corrective action is recommended, based in whole or in part on representations disseminated by radio or television, the Bureau of Investigation will specifically identify in its report on the investigation the questioned claims and the call letters and addresses of the stations or station over which such representations were found to have been disseminated.

In all cases of this type in which complaints or orders to cease and desist are issued, the Bureau of Litigation will identify the claims that were disseminated by radio and television, the call letters and addresses of the stations shown by the record to have disseminated these claims, and furnish the Secretary with a suitable letter to the Secretary of the Federal Communications Commission transmitting this information, together with a copy of the complaint or order to cease and desist, including the initial decision.

In all cases in which stipulations are negotiated, this responsibility of final identification of claims, call letters and addresses of radio and television stations and preparation of the letter for the Secretary of this agency to the Secretary of the Federal Communications Commission rests with the Bureau of Consultation.

For purposes of the Secretary's letter, the identity of the questioned claims will generally be adequately set forth in the complaint, order, and initial decision, or stipulation, but it will be necessary to identify the particular claims with the call letters and addresses of the particular stations over which the inhibited claims were disseminated.

It was further directed that hereafter evidentiary material in the investigational portions only of the Federal Trade Commission's files be made available to Federal Communications Commission on the same basis as evidentiary material is now made available from investigational records to the Department of Justice and the Post Office Department and other agencies mentioned in the Commission minute dated April 14, 1955.

Where radio or television advertisements received pursuant to the usual procedures appear to be significantly questionable but the Commission is without jurisdiction, the Secretary will inform the Federal Communications Commission in each case, by the bureau handling the particular matter.

That is the statement in this connection.

I had a check run this morning. I find in the past, I believe, 6 months of the operation—over the past 2 years—under the operation of this liaison arrangement we have referred approximately 20 to 25 stipulations to the FCC, 50 to 60 complaints, and about 30 to 35 orders to cease and desist.

I might indicate something of the statistical work of this division or this unit on radio and televising, which I believe consists of two attorneys, two other monitors, and two secretarial and clerical personnel.

In the period January 1 to June 30, this year, the unit screened 4,215 radio continuities, 2,198 television continuities, and 5,684 magazines and newspapers, or a total of 12,097. These matters were referred, as they were screened, if there was possibility of violation, to the various areas within the Commission where the matter might be of particular interest. We have monitoring equipment at the Trade Commission. We have the following:

First, an Auricon sound movie camera, two Philco television sets, one 21-inch console used for monitoring and one 17-inch set used for recording television commercials, one Philco AM and FM radio, one tape recorder, two dictaphones which can record directly from either the television or radio, one editing machine for viewing individual movie films.

The television sets are connected to an antenna which permits excellent reception and is capable of reaching the three Baltimore TV stations, one in Richmond, Va., and four in Washington.

It may be of interest, Mr. Chairman, to indicate some cases in which our monitoring program has resulted in corrective action. These cases at the same time indicate the general problem with respect to TV advertising.

The first case I might mention is that of *Lanolin Plus*, docket 6827, a 1957 case. That is a case involving what we call scare tactics. The advertising on the TV was:

Stop. Don't burn your hair with harsh detergent shampoos.

There was a picture of a model washing her hair and she looks up with a startled look as the announcer presents this warning. That resulted in a complaint and order, and we used the picture or cited the picture as part of our complaint, and cited it in the order.

Then there was a 1958 case, *Adell Chemical Company, Inc.*, docket 7506, involving the product Lestoil. This is what we call an affirmative disclosure case.

The chemical company was ordered to disclose that Lestoil is a combustible mixture and purchasers may not use it near an open flame—in other words, required to make an affirmative disclosure of the combustible nature of the product.

The TV pictures had shown the product being used near flames.

It might be of interest to you that in this particular instance the Commission issued a complaint and for the first time attached pictures taken off the TV screen of the matter in question. Here is a picture of a boy with his chemical set, Lestoil prominently displayed, and the Bunsen burner flaming away.

Another picture, Lestoil near a radiator, near a washer, and on top of a stove.

Another case that may interest you is the *American Chicle Company* case, 1958, our docket 6791. It was an order representing that stomach acid will burn a hole in a cloth napkin. I am sure that all viewers of TV will remember those representations and also, we issued an order against the use of the white coat, implying a doctor, unless it were a fact that the doctors had recommended this remedy.

Mr. ROGERS. Mr. Chairman, for purposes of inquiry, we are not getting any place with these revelations. Most of us are familiar with these cases.

I have some questions and I think the other subcommittee members have questions, as to what has transpired with regard to this investigation.

I am wondering if we are going to have an opportunity to ask them this morning. This is simply repetition, it seems to me, of case after case, which does not mean anything, in connection with what we are trying to find out.

Mr. KINTNER. I am at your disposal, sir. I am trying to give background covering the areas that I was advised you were going into. I am very happy at this point, if you so desire, to answer any questions.

The CHAIRMAN. As always, there will be ample opportunity for questions regarding this matter.

I have only this further comment at this time. I can understand the explanations which are given on behalf of the Commission regard-

ing their interpretation of present law, and the explanations thereon, with reference to actions of the Commission in the past, dealing with these matters. Certainly, there is a question, with respect to the adequacy of the law.

I hope nobody gets an implication from this that there is a reluctance on the part of the Commission, readily admitting if they so decide there is a lack or adequacy of the law, to assist the subcommittee in developing the kind of legislation that is needed in dealing with it.

To me, that is the crux of this whole thing.

Mr. KINTNER. Mr. Chairman, we will be very happy to work with you as a Commission, and all our staff experts, in any formulation of legislation which you may desire. We will give you our very best technical advice on this.

I do tender the Commission's cooperation in whatever corrective measures—legislative measures—this committee may determine may be necessary as a result of the disclosures made before the committee.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS. Mr. Kintner, you are familiar with the revelations that have come out before this subcommittee and before the New York grand jury in relation to matters that have transpired in these television programs, are you not?

Mr. KINTNER. I am not familiar with the grand jury revelations, but I assume that roughly the same material has been adduced here, the same revelations, and I have been briefed from day to day by the general counsel on the revelations before this committee.

Mr. ROGERS. You are familiar with the practices, let us say, employed by the producers of these television shows, advertising several different products, broadcast before the American public as being deceitful and fraudulent, are you not?

Mr. KINTNER. Yes, sir.

Mr. ROGERS. Does your familiarity with those practices lead you to the conclusion that they were deceitful and fraudulent, Mr. Kintner?

Mr. KINTNER. If the testimony adduced here is correct, and I have no way of determining that it is not—if that testimony is correct—then certainly the public was deceived, and the practices were what we normally called fraudulent.

Mr. ROGERS. Mr. Kintner, to bring you up to date, on some of the matters referred to in this letter of October 12, 1959, addressed to Mr. Harris, you make certain quotations as to the action of your staff in New York. You say that—

the producing corporation has not represented in the past and will not in the future represent, any quiz program it produces as spontaneous and unrehearsed, when such is not the case; has not represented in the past and will not represent in the future, that any of the questions used on such quiz programs have been prepared or approved by any person, organization or institution, when such is not the case; has not represented in the past and will not in the future represent, that questions used on such quiz programs have not been seen beforehand, by persons not connected with the program, who have in fact seen such questions.

Your representative in New York obtained an affidavit to that effect?

Mr. KINTNER. That is correct.

Mr. ROGERS. Which would indicate to me that since he spelled these things, he considered those to be fraudulent practices, had they been indulged with in the past, or if they were to be indulged in, in

the future. Therefore, he closed the case because he had assurance from this producer that he would not participate in those deceitful practices again.

Am I correct in my interpretation?

Mr. KINTNER. I think that is a fair characterization, although we did not make a full investigation. We had really no evidence upon which to conclude that this was the case. There were ex parte statements made by a lady contestant and she was then engaged in suing the producer. I don't know what happened to that particular case.

I will say this, Mr. Rogers, the affidavit, as I understand it, is at variance with the revelations made before this subcommittee of the situation in the industry.

Mr. ROGERS. I think it might be at variance with one or two isolated situations, but there is enough information in the hands of this subcommittee to include this in all parts, I think.

I think I can say that to you.

Now, with regard to the affidavit, the fact of the matter is this: Mr. Kintner, the affidavit does not mean very much because you could not prosecute the man who signed that affidavit in New York, could you?

Mr. KINTNER. I am not a New York lawyer, but I would assume probably not.

Mr. ROGERS. The New York false-swearing statute requires that the affidavit be made with reference to something that is required to be sworn to by law; does it not?

Mr. KINTNER. I could not answer that, sir.

The way you put it sounds reasonable under the laws of the States with which I am familiar. I am trying to be helpful.

Mr. ROGERS. You did have this information in 1956?

Mr. KINTNER. That is correct.

Mr. ROGERS. That is, the Commission did.

I believe you said you did not have that information when you wrote your first letter to Mr. Harris.

Mr. KINTNER. No. As a matter of fact, the staff gave us a memorandum, gave it to the General Counsel, who was preparing the reply to Mr. Harris, in which they stated categorically that there had been no investigation made.

But in connection with preparing for my appearance here, a member of the staff, who had a longer memory than those who had checked this originally, said, "Yes," we did have one matter. It is not entirely in point because it was in connection with the warming up and it never went to the Commission, but there was one investigation, at least, of a preliminary nature. That is how it arose.

Mr. ROGERS. Mr. Kintner, although you were not a member of the Commission in 1956, you were General Counsel at that time, were you not?

Mr. KINTNER. That is correct. But these investigative matters never reached my attention because I was the Commission's adviser.

Mr. ROGERS. You were the Commission's adviser. You did not know anything about this investigation in 1956?

Mr. KINTNER. No, sir.

Mr. ROGERS. Was that because it was closed out at staff level?

Mr. KINTNER. Partly.

I would really not have known about it if it had reached the Commission's attention unless the Commission had sought my legal advice on it. They might well have done so because it is a gray area of the law.

As General Counsel, it was my job to feel out some of these gray areas of the law and doubtful questions of the law.

Mr. ROGERS. I want to come to that gray area in just a minute, because I think there has been entirely too much stress put on that situation.

The reason I am asking this question is because I would like to know very much, just how much the staff has to do with the operation of this situation that is not known to the Commission.

Mr. KINTNER. We have control procedures, and it might be useful if I detail for the record at this time our management and procedure Bulletin No. 4, which is dated May 20, 1958.

Mr. ROGERS. Let me say this: I do not want you to get off into a long dissertation about procedural matters. If you would like to have that inserted into the record and let me ask you some more questions about this—

Mr. KINTNER. If it may go into the record at this time, I can briefly summarize.

Mr. ROGERS. Would you do that, please?

Mr. KINTNER. I am as anxious as you that we proceed expeditiously.

Mr. ROGERS. I know you are.

Mr. KINTNER. The bulletin sets up the procedure for closing any investigative file, falling into certain categories. They are forwarded to the Secretary of the Commission for presentation to the Commission if they fall within certain categories.

The first category is investigation of alleged violation of section 7 of the Clayton Act, where any substantial question of law or fact exists. That is the antimerger law, Mr. Rogers.

Before a matter can be closed involving the violation of the anti-merger law, section 7 of the Clayton Act, and where there is a substantial question of law or of fact it is forwarded to the Secretary in all instances for presentation to the Commission.

These are all informal files.

Mr. ROGERS. Yes, I understand.

Mr. KINTNER. Not the formal cases.

2. Any nonroutine investigation instituted as a result of information referred to this agency by a Member of Congress. If it is completely routine, the staff may close, but if it is nonroutine it must come to the attention of the Commission via the Secretary.

3. Any investigation in which there have been conflicting recommendations by senior staff attorneys as to the action to be taken. In other words, two senior attorneys of the staff disagree, the matter must come to the Commission, no matter how small or large it may be.

4. Any investigation in which the cost of the investigation is the primary factor in the determination to recommend closing. Then the Secretary at his discretion may present to the Commission for its consideration any other investigative file containing a recommendation for closing.

Mr. ROGERS. Those are the things we can discuss: what the Federal Trade Commission is or is not doing.

Mr. KINTNER. Those are the procedures we set up for delegation to the staff.

Mr. ROGERS. You do take the position that the FTC was set up, not only for the purpose of protecting the individual, the American public from fraud and deception, but also to maintain a balance of fairness and a code of ethics or standards as between businessmen in commerce generally, do you not?

Mr. KINTNER. Indeed, I think the latter was the primary objective of the Federal Trade Commission Act.

Mr. ROGERS. You mean you think that the people were just incidental to this situation?

Mr. KINTNER. The main thrust of the act is the protection of the competitive free enterprise system. To the extent that system is protected, the people are also protected.

Of course, we have the 1938 Wheeler-Lee amendment, which deals directly with falsifying, and that protects both the businessman and the consumer.

Mr. ROGERS. Of course, that is one thing that disturbs me just a little bit. You did have knowledge because of this 1956 situation—the Commission had knowledge—that there were complaints about practices of this kind being carried on in the television advertising, did you not?

Mr. KINTNER. Not the practices which have been the main subject of this committee's inquiry, but this was in connection with the warming up.

Mr. ROGERS. I understand.

It was in connection with the warming up period. There is some question about whether that is legal or illegal. But you did understand that there was some dissatisfaction with the way commerce was being carried on in the advertising medium of television, did you not?

Mr. KINTNER. We had this complaint from the lady who had also filed the suit.

Mr. ROGERS. Did you have any other complaints at all?

Mr. KINTNER. None that the staff have been able to find.

Mr. ROGERS. Does the Federal Trade Commission require a complaint, before it has authority or jurisdiction to move in and correct a situation that might appear bad?

Mr. KINTNER. No. We very often move on our own motion. Usually toward an industrywide investigation where we get a flood of complaints that indicates that a situation is rife in an industry and then on our own motion we will schedule an industrywide investigation.

Mr. ROGERS. That is not required under the law; is it?

Mr. KINTNER. No.

Mr. ROGERS. As a matter of fact, the Federal Trade Commission has the power to move in for one isolated case and stop it, on its own complaint, does it not?

Mr. KINTNER. Yes, there is no question about that.

Mr. ROGERS. The law vests you with that authority?

Mr. KINTNER. The only limitation is one of manpower and funds.

Mr. ROGERS. Let us not go into that.

Let me say this about this: If there was as much attention paid to the protection of the American public by boards and bureaus, as there is trying to work out enlargements of budgets and manpower, I think

we would be in a lot better shape. I am not interested in that part of it. You go before the Appropriations Committee for that. Let us stay with the subject of law today.

Mr. KINTNER. Very well.

Mr. ROGERS. We had an awful time Saturday with the Chairman of the Federal Communications Commission running off on sidetracks every time we would get started. I think you want to be fair about this and certainly I do. I certainly do not want to get off on the money proposition.

In other words, the law says "unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce are hereby declared unlawful"?

Mr. KINTNER. That is correct.

Mr. ROGERS. That is the wording of the act.

Have the courts defined what is meant by that section 5?

Mr. KINTNER. The Commission and the courts have defined it on a case by case basis.

As I have indicated, the courts have, to some extent, limited us in this area of good taste, morals, and censorship.

Mr. ROGERS. Yes.

Mr. KINTNER. What the courts would have done had we had all the information that this committee has and had brought a case, I don't know. I think it would probably be one of those hard type cases whereby any order we might have issued would have been approved by the court.

Then you get into the matter of the use of falsies in a program or low busts or anything of that sort, and I don't know what the courts would say.

Mr. ROGERS. Let us keep the sexual situation out of this. They tried to bring that in the other day in *Lady Chatterley's Lover*. I am interested in law today, if you do not mind.

The fact of the matter is this: you make up your own conclusions, as to where your jurisdiction ends, do you not?

Mr. KINTNER. The Congress, Mr. Rogers, I think purposely gave us a broad grant of authority, as you have indicated.

Mr. ROGERS. Yes, sir.

Mr. KINTNER. Within the meaning of that statute, within the limits as we are able to judge the congressional intent, we are able to catalog business practices as they arise and prohibit them, subject to court review. Of course, all of these matters after they leave the Commission are subject to court review and that is where we get our primary guidelines on what the law is.

Mr. ROGERS. That is right. That is the very point.

You do have rulemaking power, do you not?

Mr. KINTNER. No, we have no rulemaking power. We can only operate through the adjudicatory authority with respect to section 5.

You are aware that we have the wool labeling, the fur labeling, and so forth, where we have been given a delegation by the Congress to make rules and regulations.

Mr. ROGERS. That is what I am talking about: in those specific instances.

Mr. KINTNER. These are, as you are aware, as a longtime able and experienced Member of Congress, delegations in particular instances.

But the delegation that the Congress gave us in 1914 under section 5 of the Trade Commission Act was a delegation to proceed by adjudicatory methods, to issue a complaint and then to hold a hearing and then to issue a cease and desist order.

Mr. ROGERS. Yes.

Mr. KINTNER. This covered a set of business practices, a factual situation, and contained no delegation for rulemaking generally. We do a lot of that informally.

Mr. ROGERS. You misunderstood. I did not mean that you had the right to make laws. I did mean, that under certain circumstances you do have rulemaking power. But your position is that you do not have rulemaking power that would allow you to define what deceptive acts or practices in commerce are.

Mr. KINTNER. Not rulemaking as it is technically called. I don't think there is any difference between us. You have in mind that we are to catalog the business practices.

Mr. ROGERS. That is right.

Mr. Kintner, you do not take the position that you are a court or that you constitute a court or were intended to be a part of the judicial branch of this Government, do you?

Mr. KINTNER. Not in the least.

Mr. ROGERS. Does the substantial evidence rule apply in your Commission?

Mr. KINTNER. Absolutely.

Mr. ROGERS. Actually, you have a tremendous amount of power when you make findings of facts. The court has to go a long ways to upset your decision, does it not?

Mr. KINTNER. As long as we operate with a maximum due process and do not go too far out of bounds in relation to congressional intent, the courts will sustain us as the finders of the fact. But if we get too far off the reservation, the courts usually find a way to knock us down.

Mr. ROGERS. Mr. Kintner, there has been a great deal of discussion about what the Constitution is for, and what it is against, and who has the right to go some place insofar as the law is concerned, and who does not.

It is not your position that the Constitution was ever intended to underwrite fraud and deception in any form, is it?

Mr. KINTNER. Absolutely not.

Mr. ROGERS. You knew there was fraud and deception being practiced in this particular situation, or I think by the exercise of reasonable diligence, you should have known.

Is it your position, that because there was some question in your mind as to whether or not you had the power to move and do something about this, or whether an act that would prohibit these acts was unconstitutional—what did you base your determination on, not to do anything?

Mr. KINTNER. My determination, as chairman of the Commission, was expressed in this letter to Mr. Harris.

The matter had not been brought to my attention before then. I was not aware of the staff investigation. I was aware when we were formulating the letter that it was what we call a gray area, or a doubtful area of jurisdiction.

Mr. ROGERS. How long did this gray area exist? That is, from the time you found out about it, and you realized there was a gray area, until today. How long has that been?

Mr. KINTNER. Mr. Harris' letter was answered on September 3, 1959.

Mr. ROGERS. You mean by that, Mr. Kintner, this was the first time you determined those acts were in a gray area of the law?

Mr. KINTNER. It is the first time that we had given attention to this legal question, except that the staff in this earlier matter had taken an affidavit from the program executive that the program had gone off the air.

Mr. ROGERS. This had been going on all the time and your position is, that the Federal Trade Commission was doing nothing about it at all until you answered the letter of Mr. Harris on the date specified by you, in your previous answer?

Mr. KINTNER. Yes, I think that is a fair statement of my position or of the position at the Commission.

We simply had had only one complaint involving this and that complaint was the subject of private litigation and the program had gone off the air.

Mr. ROGERS. I understand.

Without any complaints, there was nothing to keep you from moving in, if you thought you had jurisdiction in stopping a deceptive practice, was there, Mr. Kintner?

Mr. KINTNER. No.

Mr. ROGERS. You had the power in the law to do that if you wanted to do it, did you not?

Mr. KINTNER. Our power is, as you have indicated, very broad. But I think it must be used with certainly one eye on the congressional intent, as far as we can determine it, and as the courts—

Mr. ROGERS. You certainly did not think it was the congressional intent that an agency permit a fraud to be practiced on the American people, did you?

Mr. KINTNER. No. But there is another point that I think is relevant here.

The primary jurisdiction for regulation of the television and radio industry rests with the Federal Communications Commission. I am not the judge of what their authority is to regulate situations of this type.

Mr. ROGERS. I am not talking about that, Mr. Kintner. We went over that with Mr. Doerfer. I do not know whether he was trying to lay it on the lap of the Federal Trade Commission or some place else. He certainly was trying to avoid any responsibility of the Federal Communications Commission.

The point I am trying to make with you is this: that you did not do anything at all on your own initiative after you had this affidavit and filed it. The matter was forgotten about as far as the Federal Trade Commission is concerned, is that correct?

Mr. KINTNER. That is correct.

It is not the type of situation that we have looked into in the past, with few rare exceptions. In those instances the courts have refused to permit corrective action to be taken. Not this precise situation but situations of a similar nature.

Mr. ROGERS. You said you carried on a liaison with the Federal Communications Commission about TV activities.

Mr. KINTNER. That is correct.

Mr. ROGERS. How long has that liaison been carried on?

Mr. KINTNER. It has been carried on, I believe, since 1957. The formal liaison.

Mr. ROGERS. Does that liaison consist of you telling the FCC everything you know, and the FCC telling you nothing?

Mr. KINTNER. They submit to us complaints from the public involving false advertising.

Mr. ROGERS. Did they submit anything to you with regard to this particular transaction?

Mr. KINTNER. No, sir.

Mr. ROGERS. Nothing in regard to this current inquiry, except for the advertising matter, was under investigation?

Mr. KINTNER. Not with respect to this practice in programing. They have from time to time referred letters of complaint regarding advertising practices. We get about one of those a month.

Mr. ROGERS. I mean in regard to this particular TV quiz show investigation.

Mr. KINTNER. We have none; no, sir.

Mr. ROGERS. They never advised you about anything at all, or work out their liaison to advise you of what it was?

Mr. KINTNER. Not to——

Mr. ROGERS. Your position is that you have had no official advice one way or another since you closed the matter in New York in 1956, until you wrote to Mr. Harris or received his letter which you answered, and subsequently made a part of this record?

Mr. KINTNER. That is correct. Unless there was some discussion with members of the staff.

Mr. BABCOCK. Is it all right for——

Mr. ROGERS. Is it all right for Mr. Babcock to answer the question?

Mr. KINTNER. He is the Executive Director of the Commission.

The CHAIRMAN. We will have to swear Mr. Babcock in if he is going to testify. Do you solemnly swear the testimony you give to this committee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BABCOCK. I so swear.

The CHAIRMAN. Give your name for the record.

Mr. BABCOCK. Harry Babcock.

The CHAIRMAN. What is your position?

Mr. BABCOCK. My present position is Executive Director of the Federal Trade Commission. In 1955 and 1956 and 1957 I was Director of the Bureau of Investigation. That was about the time that we began to have inquiries, informal in character, with respect to these contests.

Mr. ROGERS. What do you mean by informal in character, Mr. Babcock?

Mr. BABCOCK. I think it would be in the nature of attorneys dropping by and saying, is there anything illegal about these contests which we are up against? We don't know how to compete with them. I have in mind, Mr. Congressman, probably the same one as you do. They did, too. The question was originally posed on the proposition

that the contests were honest. I ask you to go back to the climate and the condition of that time. There was no question at that time that came to us that there was anything phony, if I may use that word, in connection with these things. The question was on, do these contests present an unfair method of competition that you people can get at.

I might say we explored that extensively on the assumption that the contests were honest and fair. We had no reason at that time, sir, as far as I am informed, to believe that they were not. The question was, is this an unfair device in and of itself. After considerable research we saw no way, at least I didn't as Director of the Bureau of Investigation, nor did my advisers, whom I asked for advice, see any way at that time to bring a proceeding or to recommend to the Commission that they should initiate any proceeding. The proceeding would have to have as its object the abatement of the contests and we saw no way of doing it.

Mr. ROGERS. You mean even if they were crooked?

Mr. BABCOCK. Wait a minute. I am coming to that. Then we got this one little notice from an attorney in New York who was sponsoring this suit, and he asked the Federal Trade Commission to help him in his suit. He represented a contestant who felt that the program had breached the contract that they made with her, a written contract.

Mr. ROGERS. That was in the 1956 letter that Mr. Kintner read?

Mr. BABCOCK. That was the 1956 letter. I as Director of the Bureau of Investigation for the first time had brought to my attention the fact that there might be an element of deception in this thing. Even then, sir, it was not presented in the clear way that we see it now. It looked like a little small and rather inconsequential breach of contract suit.

Mr. ROGERS. Did you get a letter from Mr. Hilgemeier?

Mr. BABCOCK. I don't recall. We originated the investigation on our own motion eventually. I docketed it.

Mr. ROGERS. I mean after this letter in the 1956 situation, did you get any letter from Mr. Hilgemeier about his situation?

Mr. BABCOCK. I could not answer that.

Mr. ROGERS. Mr. Kintner, do you know?

Mr. KINTNER. I have no information on that. We will cause our correspondence files to be checked under that name and advise the committee whether we have any correspondence with Mr. Hilgemeier.

(A reply to the above question follows:)

FEDERAL TRADE COMMISSION,
Washington, November 4, 1959.

HON. OREN HARRIS,
Chairman, Special Subcommittee on Legislative Oversight, House Committee on Interstate and Foreign Commerce, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to requests by members of the Subcommittee on Legislative Oversight, and its counsel, Robert W. Lishman, that this Commission furnish a statement for the record in the television quiz hearings setting forth additional information with respect to matters raised during the course of Chairman Kintner's testimony on October 12, 1959.

In answer to questions set forth at pages 58 and 59 of the record, this is to advise you that the Commission has not received any correspondence or communication from either Mr. Hilgemeier, who was a witness before the subcommittee, or from the New York Grand Jury which investigated the television quiz programs.

At pages 93 to 97 of the record, Mr. Lishman directed a series of questions to Chairman Kintner concerning a Commission proceeding involving Advertisers Associates of America, Inc., and others, which is Commission docket No. 7304. Chairman Kintner stated that he was unfamiliar with the proceeding and requested leave to supplement his testimony with this report. There are attached hereto as exhibits A and B, respectively, copies of the Commission's complaint and the consent order in docket No. 7304. This proceeding was referred to by Mr. Lishman as indicating that the Commission had jurisdiction, under section 5 of the Federal Trade Commission Act, over the sale of television quiz programs by the producers thereof to television networks when the producers misrepresented the programs to be honest contests of knowledge between the contestants.

We do not believe that the Commission's proceeding in docket No. 7304 represents any departure from the type of false or deceptive acts and practices which Chairman Kintner testified has been the subject of other Commission proceedings and court litigation.

Briefly stated, the underlying facts upon which the Commission's complaint and consent order in docket No. 7304 were based include the following:

Advertisers Associates of America, Inc., and the two other corporations involved therein were wholly owned and controlled by Arthur Hammell, who maintained the principal place of business of the entities involved in the State of New York. Through these corporations and an individual proprietorship, Teleradio Advertisers, Hammell engaged in the sale of advertising promotional plans to radio and television stations and to merchants in areas surrounding each such station. Our files show that the stations and the merchants to whom Hammell sold his advertising plans were located in New York, California, Indiana, and Georgia.

Hammell entered into contracts with the stations whereby the latter agreed to broadcast a specific number of commercials which advertised the merchandise of participating merchants. In conjunction therewith the stations were to conduct and adjudge the contests and to award prizes to be furnished by Hammell. The plan was limited to the sale of commercial air time and supplying of advertising copy, contest formula, prizes, and promotional materials. Hammell did not furnish any entertainment or otherwise exercise any control over the stations' programs.

Hammell solicited local merchants surrounding participating stations to execute contracts under which the merchants agreed: (1) to pay a specified fee for radio or television advertising of their products and (2) to sponsor contests conducted by the station by distributing entry blanks at their places of business and by displaying other promotional or advertising material with respect to the contests. Hammell shipped in interstate commerce merchandise such as watches to be used by the stations as prizes, and advertising and promotional material to be used by the merchants. Under the contracts entered into with the radio and television stations, Hammell agreed to pay them a specified portion of the advertising fees paid by the subscribing merchants.

In selling this commercial advertising plan, Hammell made false claims relating to integral parts of the plan such as representing that (1) Hammell's salesmen were agents of the station, (2) the merchants' products would be displayed on the television program, (3) the commercials to be furnished by him would be changed monthly, (4) only one business of a kind in a specific area would be permitted to participate in or sponsor the promotion, and (5) prizes for contest winners would be furnished. Our investigation disclosed that there was widespread dissatisfaction among both participating merchants and stations concerning Hammell's activities with respect to his contractual obligations.

In our view the underlying factual distinction between the Commission's proceeding against Hammell and his companies in docket No. 7304 and any alleged false or misleading representations by producers in connection with the sale of television quiz programs is apparent from the above summary. In docket No. 7304 the Commission's action did not in any way concern the entertainment content of the television or radio productions upon which the commercials of the local merchants were broadcast or shown. Neither did the Commission challenge the evaluating processes used or the means employed by the stations to decide or adjudge the winners of the contests for which Hammell was to furnish prizes. The Commission's complaint and order to cease and desist were limited and restricted wholly to false statements and deceptive acts utilized by Hammell in direct connection with the sale of a commercial and business scheme, an integral part of which consisted of the shipment in com-

merce of tangible articles such as merchandise and advertising display materials. None of the respondents in docket No. 7304 were in any way engaged in creating, writing, producing, or selling an entertainment program for dissemination on radio or television. Accordingly, we do not see any inconsistency between the Commission's action in docket No. 7304 and Chairman Kintner's letter of September 3, 1959, or his testimony on October 12, 1959.

At page 131 of Chairman Kintner's testimony, this Commission was invited to assist the subcommittee in its consideration of additional legislation which may be necessary to correct the abuses disclosed in the hearings. Following the completion of the subcommittee's investigation, we will be available to consult with the subcommittee and its staff with respect thereto.

By direction of the Commission.

EARL W. KINTNER, *Chairman*.

Mr. ROGERS. So far as you personally know, then, you didn't have any information on this subject at all between 1956 and today, other than the letter you referred to, which you and the chairman wrote to each other?

Mr. KINTNER. There were the disclosures in the newspapers. There were articles indicating that the contests could in effect be rigged through this method of warming up. You will recall, Mr. Congressman, that there were some articles along that line.

Mr. ROGERS. Yes, sir.

Mr. KINTNER. Then at a later time there were disclosures made. We learned of a grand jury investigation.

Mr. ROGERS. Did you confer at any time with the grand jury and try to be helpful as the Federal Trade Commission in trying to work this problem out?

Mr. KINTNER. As far as I know, we didn't have any formal contacts with the grand jury. The people from the staff who are here indicate that is a correct answer.

Mr. ROGERS. Did you have any inquiries from the New York grand jury asking you to be of assistance or to furnish information?

Mr. KINTNER. I will check that. As far as I know now, no inquiries. We will check any of these questions that you have asked here, and if we find we have not given your full information on it, we will certainly advise your staff.

Mr. ROGERS. Mr. Kintner, as I understand, you took the position, and the Federal Trade Commission took the position all along, that this was not their baby, they had nothing to do with it, and they were not going to have anything to do with it, one way or the other, is that correct?

Mr. KINTNER. That is not quite correct. I think if we had had another complaint which would go to the problem that you have been investigating—I think if we had had such a complaint that we would have been bound to have made at least some preliminary investigation, and then the Commission itself would have been bound to have made some determination as a Commission with respect to this whole area of jurisdiction.

Mr. ROGERS. Why should you need a complaint? Why couldn't you institute one of your own, after you had this information from the personal knowledge of reading about it in the newspapers? Why couldn't you direct some of your staff members to get busy on this thing and see what was involved in it? It involves nationwide advertising.

Mr. KINTNER. We normally do not, when we are advised a grand jury or criminal prosecution exists, step into that picture. We some-

times will step into the picture where there is merely civil litigation. That was the instance in this earlier matter. Normally where criminal proceedings are in prospect, we do not step in to the picture until the final decision is made with respect to criminal proceedings.

MR. ROGERS. Mr. Kintner, let me get this straight in my mind. Under your authority, it is not necessary that there be any civil liability, or any criminal liability for you to issue a cease and desist order, is there?

MR. KINTNER. That is correct.

MR. ROGERS. If there is a practice, that has not been anticipated by the legislative bodies, that might not be criminal in nature, or might not have attached to it a civil liability, do you take the position that you are not supposed to do anything until those legislative bodies get into action, and either create a civil or criminal liability?

MR. KINTNER. No, sir; I do not. If this had been clearly a matter of fraudulent or false advertising, where we had traditionally operated in law enforcement, we would have stepped into the picture.

MR. ROGERS. That is the thing I am getting at. You seem to be living on tradition rather than on responsibility. The responsibility of the Federal Trade Commission, to me, goes to the American people and to the people engaged in commerce to maintain a fairness and to prevent people from being bilked, let us say. If the Federal Trade Commission is simply going to take the position, "Well, it is not traditional for us to get into this sort of situation," any new medium of communication is certainly not going to be permeated with tradition because it has never been in effect before.

MR. KINTNER. Mr. Congressman, I used the word "tradition" in the layman's sense. I think if I spoke as a lawyer, I would have to use the term "legal precedent." We would also have to keep in mind that the Congress in passing the Federal Communications Act dealt with the question of censorship of TV programs. The gist of the deception and fraud here was in the program itself, rather than in the advertising that was disseminated over the air. We keep a very close watch on advertising. We used to call for 24-hour continuities, four times a year, from every radio and television station. We worked it out now so that we are able to get the continuities on a less frequent basis, but more selected.

MR. ROGERS. When you speak of censorship, are you talking about the fact that there was a doubt in your mind as to whether or not you would have the constitutional right to do anything because of the first amendment?

MR. KINTNER. Oh, no. I am speaking of it in the broad sense of some of these cases of ours where the courts have sharply limited our authority to do anything about, let us say for example, the testimonials.

MR. ROGERS. You were speaking of the gray area. It was determined this was a gray area, so we will not do anything? Was that made gray by your doubts as to the constitutionality of it, or your doubts as to whether or not it would stand up because of certain court precedents?

MR. KINTNER. The latter.

MR. ROGERS. The latter?

MR. KINTNER. Yes.

MR. ROGERS. In other words, you are not concerned too much with the constitutionality of the situation.

Mr. KINTNER. No, I think I have a heavy enough burden to carry here without going into the constitutional aspects of it.

Mr. ROGERS. I am glad to hear you say that, Mr. Kintner, because I think some of the boards, by virtue of their testimony here, are donning the robes of the Supreme Court in determining what is constitutional and what is not. Although they are talking about their own jurisdiction, they are undertaking to invade the judicial jurisdiction and make these determinations as apologies for not doing something that they should have done in the first place. I feel, insofar as your gray area is concerned—and I want your feelings about this—that when a gray area is determined with relation to your jurisdiction or your responsibility, don't you think it is your obligation to have that matter presented to a proper court or court of proper jurisdiction so that it can be finally determined to get it out of the gray area?

Mr. KINTNER. We do that. We do that pretty generally. Here we had tried in many past cases to get the courts to extend our jurisdiction in this respect, or in similar situations, and the courts had turned us down. It is a matter of judgement how many times you try to explore a particular jurisdictional problem.

Mr. ROGERS. I don't think any of the cases you have cited are what we call white horse cases.

Mr. KINTNER. They are not wholly in point factually. As a lawyer, I would frankly tell you that they are not wholly in point. I think as a lawyer I could make a pretty good case for jurisdiction as well as a case against jurisdiction. At least a persuasive argument for jurisdiction. Where it would end is a great problem once you started down that road. The courts have limited the road, really.

Mr. ROGERS. Don't you think it is your responsibility to let the courts take that responsibility, rather than for you to assume jurisdiction that actually you don't have? You seem to be worrying about jurisdiction on one point, insofar as the people and the trade is concerned. Yet you invade the jurisdiction of the courts to make a determination as to what the outcome of a case will be.

Mr. KINTNER. It is a matter of judgment, Mr. Rogers. We are bound to explore the limits of our jurisdiction. How many situations should be explored is a matter of judgment. What we would have done had we had this information before us and what the courts would have done if we had issued a cease-and-desist order is pure speculation. In my judgment, the courts, because it was a hard case and involves fraud and deception, might well have said in this instance we had jurisdiction. But then what would we do on the next case, the next type of deception in programing?

Mr. ROGERS. I don't think that is a question for you to be determining. The difficulty in so many of these things has been with the prosecution of the law throughout the land, that is, the desire to win cases rather than have justice prevail and determine these things. The court has the responsibility to make this determination. You admit it was a gray area, that there was doubt in your mind and that of your staff as to whether or not you had jurisdiction. One body under our form of government can answer that, and that is the judiciary. Other than that, to resolve the doubts you could have come to the Congress. Did you ever make a recommendation to Congress that some law was needed to stop these deceptive practices?

Mr. KINTNER. No, sir. Without throwing too heavy a burden on my colleague, Mr. Doerfer, and his agency, I do feel, sir, that this is an area in which legislative remedies should emanate from the Federal Communications Commission. If it were a problem of false and misleading advertising, or any of the other business practices which we have through our 45 years of existence cataloged and prohibited, and there were a gray area in the law which the courts would not let us fill, then it would be our responsibility to come forward with legislation. But in this instance, sir, if legislation should have been proposed, I would say it should have been proposed by the Federal Communications Commission.

Mr. ROGERS. Of course, I can't accept that as an excuse any more than I would accept the apologies of Mr. Doerfer that he had not stopped working on the case. He has been on it 15 months to date. Nothing has been done about it. The American public has continued to be defrauded. I think the crux of the matter is this: There is deception and fraud being practiced, and if the Federal agencies set up for this purpose are not going to act, we ought to find out why they are not going to act. If legislation is necessary to correct it, it ought to be passed. If they are not going to enforce it after it is passed, but continue to say, "We still think there is a gray area," "We don't have jurisdiction," I think something ought to be done to correct the situation by doing away with the agencies and creating ones that will act.

Mr. KINTNER. I have discussed this matter of what a proper legislative remedy might be with my colleagues. At least one of the Commissioners gives me his suggestion that there be a criminal statute simply prohibiting this type of practice. I am inclined to agree that this would be a salutary effect.

Mr. ROGERS. I would be glad to have your recommendations on the subject, Mr. Kintner. I think, frankly, that the failure of the Federal agencies to move in and stop a thing that is admitted by those Federal agencies as a deception, as a deceitful practice and fraud upon the public, and admitted to by the producers of the networks or those persons operating the networks, is deceit and fraud. In fact, almost everyone that has taken this stand admitted this. I think it is a disgrace that the thing has been allowed to go on without something having been done to stop it before we got into this sort of situation.

Mr. KINTNER. The suggestion has been made to me that the industry here faces a situation not unlike that of the baseball scandals of many years ago.

Mr. ROGERS. That is right.

Mr. KINTNER. I was moved to make the statement I did about self-determination or self-discipline because I feel that these businessmen individually, and the industry as a whole, owe to the public a degree of discipline which should not be enforced solely by the Federal Government.

Mr. ROGERS. Mr. Kintner, let me say this: No one subscribes more to free enterprise in this country than I do. No one realizes more than I do that some people would very well destroy this Government in order to earn a dollar, and when you talk about letting those people self-discipline themselves, it is like making an agreement with a bunch of tigers not to eat a bunch of lambs, and then going off and leaving them. That is just exactly what is going to happen if this sort of

thing is allowed to continue under any guise of holier-than-thou business, that we are not going to do anything. I will tell you what they will do. They will do everything they can to make a dollar and it has been exhibited on this witness stand by everyone that has appeared. Their primary interest in this thing is how many dollars they can make and get away with it.

Mr. KINTNER. I would simply comment that I am inclined to think that after all of these disclosures the industry itself is going to be very, very careful about future practices.

Mr. ROGERS. They have fallen flat on their face so far, haven't they?

Mr. KINTNER. If I were advising that industry as counsel, I would be desperately casting about for means to prevent a recurrence of a situation like this. I think that is the responsibility of the industry and the individuals in the industry. The same as we as citizens individually have a responsibility for abiding by the law and not injuring in any way our fellow citizens.

Mr. ROGERS. Thank you.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Mr. Chairman, I want to be sure I understand your fundamental position. It is your belief now that if additional legislation in the field of regulation is needed, that this additional authority should be given to the Federal Communications Commission rather than to the Federal Trade Commission. Is that fundamentally correct?

Mr. KINTNER. No, Mr. Springer, that is not quite correct. I mentioned off the top of my head, so to speak, two suggestions for legislative remedy.

Mr. SPRINGER. I will get to that in a moment. We will not touch that now.

Mr. KINTNER. The criminal would be—the criminal statute—the responsibility of the Department of Justice and the respective Federal attorneys. The rulemaking, if you delegate to the administrative agency rulemaking authority, to set up rules that will amount to safeguards against situations of this kind developing in the future, I would say that rulemaking authority should be given to the Federal Communications Commission, because the Communications Commission, of course, has primary jurisdiction in this area.

Mr. SPRINGER. Would you include Federal trade practices or their violation?

Mr. KINTNER. I would not include the advertising, because we police advertising across the board—newspapers, magazines, radio, and TV.

Mr. SPRINGER. Do you believe that you have sufficient jurisdiction to cover the field of advertising in itself?

Mr. KINTNER. Oh, yes. It is the suitability of the program, the program itself, and any practices that might arise on behalf of the networks, and sponsors, in connection with the programming that I think should be the primary concern of the Federal Communications Commission.

Mr. SPRINGER. You are drawing your line, I take it, Mr. Chairman, on the premise that you deal with the advertiser and his advertisements alone; is that correct?

Mr. KINTNER. That is correct.

Mr. SPRINGER. So it is your thought, then, that your jurisdiction in the radio and television field extends only to false advertisements and actions against the advertiser who produces that advertisement; is that correct?

Mr. KINTNER. Yes; that is correct.

Mr. SPRINGER. Insofar as programing or entertainment is concerned, anything that might be either a fraudulent or wrong practice, or to which some redress might be given, is the job of the Federal Communications Commission, am I right?

Mr. KINTNER. That is correct, Mr. Springer. That is the reason we refer all of these complaints and stipulations and cease-and-desist orders to the Federal Communications Commission along with information on which stations were disseminating the advertising found to be false. That is a matter which they are bound to consider on the renewal of a television or radio license.

Mr. SPRINGER. Is this the feeling of the Commission—substantially what you have testified to—with reference to the delineation of powers of the FCC and the FTC as to these particular practices which have been revealed before this committee in these hearings?

Mr. KINTNER. Yes; I think so. It is consistent with the liaison arrangement that we set up with the Federal Communications Commission.

Mr. SPRINGER. Is your legal counsel present?

Mr. KINTNER. Yes.

Mr. SPRINGER. So that it may be clear for the record, is it on the advice of the legal counsel to the Commission that you take the position that you do not have authority presently under the law to regulate these practices which have been revealed before this subcommittee this last week?

Mr. McCAULEY. That is right.

Mr. KINTNER. Mr. McCauley, the General Counsel, prepared the letter which I submitted to Mr. Harris on this problem.

Mr. SPRINGER. May I ask Mr. McCauley if his opinion is based on all the legal authorities which he can find on the subject?

Mr. McCAULEY. That is right, sir.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Lishman, do you have any questions at this time?

Mr. LISHMAN. I have extensive questions. I might ask one or two in this gray area, if the chairman so desires.

The CHAIRMAN. If you have one or two at this time, I think in a few minutes we ought to adjourn for lunch.

Mr. LISHMAN. Mr. Kintner, as I understand your testimony, you feel that the manner in which the Federal Trade Commission acted here has been in accordance with the intent of Congress as expressed in section 5 of the Federal Trade Commission Act; is that correct?

Mr. KINTNER. I think so. With the caveat that had we had a complaint with the disclosures or some indication of the disclosures made before this committee, that we would then have made at the Commission level a determination of jurisdiction.

Mr. LISHMAN. Before coming down to the law, isn't it a fact that in the summer of 1958, there broke in the newspapers, headline after headline, disclosing the practices that have already been testified to before this subcommittee?

Mr. KINTNER. Yes. I indicated that we, as readers of the newspapers, had some information of that character.

Mr. LISHMAN. At that time, did you think it was the intent of Congress that the Federal Trade Commission should not dig in and investigate those charges that were widely publicized?

Mr. KINTNER. They were being investigated by a grand jury. I would answer it by citing the replies that I have just made to Congressman Springer concerning our general idea of the area of divisional authority between the Communications Commission and the Trade Commission.

Mr. LISHMAN. But it is a fact that you did not conduct any investigation at or about 1958 concerning these practices as revealed in the newspapers.

Mr. KINTNER. No. The only consideration that we had given was that mentioned by Mr. Babcock, concerning whether or not the quiz shows themselves might be an unfair method of competition. We determined then as to that that we certainly had no jurisdiction. The other consideration was the 1956 matter which is somewhat ancillary to the disclosures made here.

Mr. LISHMAN. Mr. Kintner, you testified a great deal about this gray area, the doubtful area of the Commission's jurisdiction. Isn't it a fact, that annually you make a report to Congress concerning the duties and activities and what you conceive to be the scope of your functions?

Mr. KINTNER. Yes; that is correct.

Mr. LISHMAN. Isn't it a fact that repeatedly you have advised Congress in these reports, and I quote, "Types of unfair methods and practices" that the Commission believes this to be within its jurisdiction?

Mr. KINTNER. Yes; we cite specimen cases and practices.

Mr. LISHMAN. I will quote from your 1958 report to Congress. The opening sentence in the appendix to your report dealing with types of unfair methods and practices:

The following list illustrates unfair methods of competition and unfair or deceptive acts and practices condemned by the Commission from time to time in its orders to cease and desist.

Is that a correct quotation?

Mr. KINTNER. It sounds very familiar. We will concede that it is whatever you are reading from. I have no reason to question it.

Mr. LISHMAN. I am reading from the Federal Trade Commission, the 1958 report to the Congress, page 81. Now, under that list of types of unfair methods and practices, which you tell the Congress is within the scope of your jurisdiction, note item 15, where you state that this is within your jurisdiction:

Selling or distributing punch boards and other lottery devices which are to be or may be used in the sale of merchandise by lot or chance.

I want to call particular attention to the words I am now going to read:

Using merchandising scheme based on lot or chance or on a pretended contest of skill.

In effect, haven't you advised the Congress in your 1958 report that a pretended contest of skill is an unfair method and within the jurisdiction of this Commission.

Mr. KINTNER. This has reference, of course, to the distribution of merchandise—

Mr. LISHMAN. I suggest the word "or" is in there.

Mr. KINTNER. Lottery. I discussed this in my first letter to Congressman Harris in my discussion of Trade Commission versus Keppel and Bros. There, as I advised the chairman, the gist of the practice was the distribution by lottery of products to children, and the courts in a long line of cases have determined that lottery and gambling is against public policy, and the use of this device has been prohibited by the Commission.

Mr. LISHMAN. Mr. Kintner, is a lottery a pretended contest of skill?

Mr. KINTNER. No, I would not say so.

Mr. LISHMAN. Why did you advise the Congress that your jurisdiction extended to pretended contests of skill?

Mr. KINTNER. I remember one of the cases was the "Put and Take," where the child would pull off a tab and pay the amount under the tab. There is no skill involved. It is pure chance. This was a very reprehensible practice. It was teaching children to gamble and it was highly unfair.

Mr. LISHMAN. Mr. Chairman, I would like to have Mr. Kintner explain just what the Commission meant in its report to Congress that pretended contests of skill were within its jurisdiction. What does he mean by that?

Mr. KINTNER. In these lottery cases, the defense was usually, or one of the defenses—

Mr. LISHMAN. I am not talking about the lottery part of that rule I just read you. I am referring to that section immediately following the mention of lotteries "or"—this is an alternative—"or on a pretended contest of skill." I want to divorce this thing from lotteries. We are not interested in lotteries here.

Mr. KINTNER. I didn't write that part of our annual report, but I am trying to reconstruct what we meant.

The CHAIRMAN. Do you have a copy of the report?

Mr. KINTNER. Mr. Babcock says he can elucidate on this point.

Mr. BABCOCK. That would refer, Mr. Lishman, for example, to a count the dot contest in connection with the sale of a product, where it didn't make any difference how you counted, you would be advised that you had won, and you would get a credit of \$20. It also has to do with similar devices where, presumably, skill is required, but it is only devised to get your name and address and give you an idea by the issuance of a certificate or something that you had won a contest. It is really not a contest. It is a pretended contest.

Mr. LISHMAN. Mr. Kintner, are you familiar with the testimony here before us that on the "Dotto" TV quiz show just such a pretended contest of skill was engaged in?

Mr. KINTNER. I have not studied as yet, the testimony.

Mr. LISHMAN. How do you distinguish between the pretended contest of skill in "Dotto" from the one to which you have just alluded? They both involved dots.

Mr. KINTNER. I would say that the similarity——

Mr. LISHMAN. And they were both phoney. How do you distinguish the two?

Mr. KINTNER. I would concede that they were both phoney from what you say, and both concern dots, but that is not the practice of which we are speaking. We get a lot of these phoney situations in bait advertising. I remember a rug case where we issued an order against some people who were saying, "Send in your old rug and we will use the material in the old rug to weave you a new rug." They had their new rugs stacked up and just mailed them out and sent the old rug to the rag picker. It is a common type of thing. This, I think, is what we are referring to in this discussion in our annual report.

Mr. LISHMAN. What is a contest of skill?

Mr. KINTNER. Which, "Dotto" or the rug situation?

Mr. LISHMAN. The rug situation.

Mr. KINTNER. That is not a contest. I used it as an analogy. It was a common type of thing. A gimmick.

Mr. LISHMAN. It would appear, that there is a considerable gray area on the meaning of the words you have given in a report to Congress, on more than one occasion, because you have the same appendix in earlier reports you have made to Congress on the same situation. I will take the 1957 Federal Trade Commission report to Congress at pages 73 and 74, where again you say, you have jurisdiction over unfair practices which involve a pretended contest of skill. I merely would like to understand how you can distinguish the "Dotto" situation from the one that has just been testified to here.

Mr. KINTNER. I would say that one point of distinction would be that in the situations that Mr. Babcock has referred to and which are referred to in this report, although not spelled out, the deception involved is the fact that there is really no contest at all as far as the contestant is concerned.

Mr. LISHMAN. Mr. Kintner, did you think there was a real contest going on among these "Dotto" contestants?

Mr. KINTNER. I am not fully briefed on that. I suppose that there is a contest of sorts. How far it went and how legitimate it was I suppose depends upon the various programs.

Mr. LISHMAN. It was palmed off on the public as an alleged contest of skill, but in reality as the testimony here reveals, it was in every case a fixed contest, rigged in advance. Would you consider that to be a contest of skill?

Mr. KINTNER. In the true sense of the word, no.

The CHAIRMAN. I think in view of the hour we should recess. It is almost 12:30 and I want to have an executive session of the subcommittee at 1:30, which should not take over 30 minutes. Consequently, the committee will take a recess now until 2 o'clock, at which time we will be back, and Mr. Lishman may resume and complete his interrogations and such other questions as the subcommittee members may have. Following that, I think I might advise at this time that the chair will have a statement to make with reference to the future schedule of the subcommittee, for the information of those who might be interested. The subcommittee will adjourn until 2 o'clock.

(Thereupon, at 12:30 p.m., a recess was taken until 1:30 p.m., in executive session.)

The special subcommittee met at 1:45 p.m., in executive session in the caucus room, Old House Office Building, Hon. Oren Harris (chairman) presiding, a quorum being present.

(The testimony taken at this executive session was released by the subcommittee by vote taken November 3, 1959.)

The CHAIRMAN. The committee will be in order.

Mr. Enright, will you come around, please, sir?

TESTIMONY OF DANIEL ENRIGHT; ACCOMPANIED BY CHARLES MURPHY, COUNSEL

The CHAIRMAN. Let the record show that Mr. Enright has returned at the request of the committee to resume testimony he gave the committee Wednesday night, October 7, 1959, and that Mr. Murphy is with him.

Mr. Enright, the purpose of asking you to come back here today is to clear up, or make a little more definite, certain parts of the record which seem to be not as clear as it should be insofar as the viewpoint of going over the record is concerned.

I might also advise you the reason that we asked you to come back here is because we had made every effort to obtain the appearance of Mr. Van Doren. Mr. Van Doren sent the committee a wire requesting that a certain statement of facts of his be included in the record, and stated very frankly that he had assured the committee that he was available.

The committee did not feel that statement of his, contrary to other information we have developed in here, should be included in the record without an opportunity to question him on it, and replied to him that the committee would be glad to hear him and invited him to come down. He has not made himself available.

We asked you to come back on the basis that if and when he made himself available we might very well ask some questions of you. Since he has not done so, then we do not need you further at this time, except to clear up one or two matters which will take a very brief time.

With that understanding, are you ready to answer the questions if they seem to be appropriate to you under the circumstances and under the procedure?

Mr. ENRIGHT. I am.

The CHAIRMAN. Mr. Lishman.

Mr. LISHMAN. Mr. Enright, with reference to the TV show, "Twenty-one," Mr. Freedman has testified that more than one-half of the shows were fixed: is that correct?

Mr. ENRIGHT. I would say so, in part.

Mr. LISHMAN. Mr. Enright, is it a fact that you sat down in advance with Mr. Freedman and planned these fixed shows?

Mr. ENRIGHT. Yes.

Mr. LISHMAN. You went over with him the categories, the points to be taken, the tie scores to be reached, and you knew that he was furnishing either the questions or the questions and answers in advance to the contestants?

Mr. ENRIGHT. May I consult with Mr. Murphy for a moment.

Mr. LISHMAN. Yes.

(Mr. Enright consulted with his counsel.)

MR. ENRIGHT. May we go off the record for a moment, sir?

THE CHAIRMAN. Again, we had that question the other night.

Let me ask this question first, and then I think that will give you your chance to answer it.

Were all of the contestants on "Twenty-one" given advance information of questions and answers that would be asked of them and required to answer on the show?

MR. ENRIGHT. No, and not all ties which were effected on the "Twenty-one" show were planned in advance.

THE CHAIRMAN. With that, it seems to me you could answer the question.

MR. ENRIGHT. Yes; I can answer the question.

The answer to your question, Mr. Lishman, is "Yes."

MR. LISHMAN. Mr. Enright, everything that Mr. Freedman did in connection with furnishing advance information to the contestants on "Twenty-one" was with your full knowledge and approval, is that correct?

MR. ENRIGHT. I can't say that everything he did simply because I don't know everything he did do.

MR. LISHMAN. Let us put it this way. Did you know and approve in advance that Mr. Freedman was furnishing assistance to the contestants?

MR. ENRIGHT. To certain contestants, yes.

MR. LISHMAN. To certain?

MR. ENRIGHT. Yes.

MR. LISHMAN. In more than 51 percent of the shows of "Twenty-one"?

MR. ENRIGHT. May I answer that in more than 51 percent of the shows there was some form of questions and answers given to contestants.

MR. LISHMAN. You knew about that?

MR. ENRIGHT. I did, sir.

MR. LISHMAN. You approved Mr. Freedman doing that?

MR. ENRIGHT. He had my approval.

THE CHAIRMAN. Right at that point, did you not say at one time the other night, which I think is on the record, Mr. Enright, that this matter sort of developed as it went along? You did not know who was primarily responsible, but you in your position took full responsibility?

MR. ENRIGHT. Being in overall charge of the program I have to assume the responsibility for that.

THE CHAIRMAN. I understand you to say that the other night.

MR. ENRIGHT. Yes; I must assume that responsibility.

MR. LISHMAN. Did you plan the scores with Mr. Freedman?

MR. ENRIGHT. Yes, on those occasions when we went over questions and answers, we would also plan scores.

MR. LISHMAN. That is all I have, Mr. Chairman.

THE CHAIRMAN. Mr. Flynt, do you have any questions?

MR. FLYNT. Yes; I do, Mr. Chairman. It deals not with this particular line of questioning but with a matter that Mr. Enright and his attorney will undoubtedly see in the late editions of the press yesterday, if they have not already seen it.

Mr. Enright, have you communicated the contents of either your testimony given in executive session or that of Mr. Freedman to anyone not members of this staff and not committee staff?

Mr. ENRIGHT. To anyone who is not a member of the committee or committee staff?

Mr. FLYNT. Yes.

Mr. ENRIGHT. Yes; I have.

Mr. FLYNT. Have you done it in a way so that it might reach the newspapers?

Mr. ENRIGHT. No, sir. I have communicated with my intimate associates and with my lawyer, my New York lawyer.

Mr. FLYNT. Thank you, sir.

Mr. ENRIGHT. Not at all.

The CHAIRMAN. Mr. Enright, what is your lawyer's name in New York?

Mr. ENRIGHT. Myron Green.

The CHAIRMAN. Mr. Green was here the other night?

Mr. ENRIGHT. He was.

The CHAIRMAN. He was present during your entire presentation?

Mr. ENRIGHT. I beg your pardon?

The CHAIRMAN. He was here during your presentation in executive session?

Mr. ENRIGHT. That is right.

The CHAIRMAN. How many associates of yours in New York have you communicated the information relating to your testimony Wednesday night?

Mr. ENRIGHT. Probably two or three.

The CHAIRMAN. Have you had any contact with any official or representative of the National Broadcasting Co.?

Mr. ENRIGHT. I met one by chance on the plane last night coming down. He is the only one I can think of.

The CHAIRMAN. You have not discussed with anyone connected or associated with the National Broadcasting Co. prior to your seeing this one gentleman last night on the plane since your testimony last Wednesday?

Mr. ENRIGHT. No, sir.

The CHAIRMAN. Did you or anyone associated or connected with you, of your knowledge, make any information regarding the testimony of Mr. Freedman before this committee to a column writer by the name of Mr. Drew Pearson?

Mr. ENRIGHT. Not to my knowledge, sir.

The CHAIRMAN. I am informed that in the late edition referred to as the five-star edition of the New York Mirror of this morning, and I was forewarned by innumerable telephone calls last night all during the night that such a story was to be published, and that it is now on the newsstands. Do you have any information as to how such a story got out?

Mr. ENRIGHT. No. In fact, I received an inkling of it just about an hour and a half ago. Someone told me that such a story was in the offing. Frankly, sir, in some measure this obviates the extent and all our efforts in the last few days because we only had one intention, that regardless of what hurt might be heaped on us, one of our sole purposes—I am sorry, one of our main purposes was to avoid hurt of other people.

The CHAIRMAN. Yes, I appreciate that.

Mr. ENRIGHT. I find this a very sad state of affairs.

The CHAIRMAN. I agree it is unfortunate that someone without any authority whatsoever would take upon himself to give out such information.

Mr. ENRIGHT. I think this is tragic.

The CHAIRMAN. Did you know anything about the wire we received from Mr. Van Doren regarding his statement for the record and his willingness to be available to the committee?

Mr. ENRIGHT. I knew of it in reading the newspapers and its first full text was first given to me by you, Mr. Chairman, the other day.

The CHAIRMAN. Were you at a meeting when the advisability of the wire was discussed?

Mr. ENRIGHT. Absolutely not, and I reacted with the same shock you reacted when I first heard about it.

The CHAIRMAN. No one represented it to you at such a meeting?

Mr. ENRIGHT. Absolutely not. Had I been asked my opinion, I would have been vehemently against such a wire because it again obviated what we were trying to effect.

The CHAIRMAN. Do you know where Mr. Van Doren is?

Mr. ENRIGHT. I do not, sir.

The CHAIRMAN. Thank you very much again. This committee is going to adjourn this session of the hearing until the 2d day of November.

Is there any reason now that you could not be back here at that time?

Mr. ENRIGHT. No; obviously I am at your disposal. The only thing, I would like to start reorganizing my life. If I could be excused for that, I would be very grateful to you, sir. As to where I locate myself, is still not definite. I may have to leave this area and relocate myself.

The CHAIRMAN. That is less than a month. I would like to advise you that I think it would be important for the committee to have you here at that time. I was asking if it would be convenient for you to be here and to let you know that we would require your presence at that time.

Mr. ENRIGHT. If you so require, I will be here. May I ask if it can be arranged that I be at your call rather than come here? I will make myself available if you do want me.

The CHAIRMAN. Pardon?

Mr. ENRIGHT. That I be available to call here, rather than appear.

The CHAIRMAN. Yes: I think that is a good idea. It is entirely possible that something could happen with the committee that we would have to postpone it, but I do not anticipate such. We will be in touch with Mr. Murphy, and he can notify you. Is that agreeable?

Mr. ENRIGHT. Yes, sir; that is much better than the earlier terms.

The CHAIRMAN. Is that agreeable to you, Mr. Murphy?

Mr. MURPHY. Yes, sir.

The CHAIRMAN. With that understanding you may go until the 2d of November. If there is anything in the meantime that changes our schedule, we will so advise you.

Mr. ENRIGHT. I would be grateful to you, sir.

The CHAIRMAN. I thank you both so much.

Mr. ENRIGHT. Thank you, sir.

The CHAIRMAN. The executive session of the committee will be adjourned.

(Thereupon at 2:55 p.m., the executive session was concluded.)

AFTERNOON SESSION

The CHAIRMAN. The committee will be in order.

Mr. LISHMAN, you may proceed with your questions.

Mr. LISHMAN. Mr. Kintner, representatives of the networks have given testimony here that they were completely unaware of the fixing of quiz shows. The sponsors have also similarly testified.

If this is so, was there not a direct product misrepresentation by the producers of these shows, when they were sold to the networks and advertisers; and was this not clearly within section 5 of the Federal Trade Commission Act?

TESTIMONY OF EARL W. KINTNER, CHAIRMAN; ACCOMPANIED BY HARRY A. BABCOCK, EXECUTIVE DIRECTOR; DANIEL J. McCAULEY, JR., GENERAL COUNSEL; SHERMAN R. HILL, DIRECTOR, BUREAU OF INVESTIGATION; CHARLES R. MOORE, LEGAL ADVISER TO BUREAU OF INVESTIGATION; CHARLES J. CONNOLLY, LEGAL ADVISER, RADIO AND TV ADVERTISING; FRANK C. McALEER, ASSISTANT TO GENERAL COUNSEL, FEDERAL TRADE COMMISSION—Resumed

Mr. KINTNER. Are you speaking of the sale of the production itself?

Mr. LISHMAN. Yes, sir.

Mr. KINTNER. Or the sale of products which they were advertising?

Mr. LISHMAN. I am speaking of the sale of the production itself, which is referred to in the trade as property or product. Both words are used in the trade.

Mr. KINTNER. This raises the old question of whether the sale of services comes within the purview of section 5 of the Federal Trade Commission Act.

Mr. LISHMAN. Mr. Chairman, this is not the question of a sale of services. This is the question of the sale of a product, namely, the idea, all in a definite tangible format, just like a package of cereal.

Mr. KINTNER. Mr. Lishman, I don't follow your reasoning in that.

What you have here is the appearance of entertainers or individuals, and I find it hard to equate this situation with the usual commodity sale that we find in our regulatory experience.

Mr. LISHMAN. Mr. Kintner, this is similar to the sale of a copyrighted article like a book. Services are not involved. They sold the property, and they have so testified. The amount they were paid for this property, as it has been so testified to here, depended upon the ratings that property received, and there was a capital gains tax transaction involved in the sale of this property. They were not talking about services. They were talking about the property itself.

Mr. KINTNER. I would say that the principal constituent of what you call a property was services of individuals.

Mr. LISHMAN. I think that was completely irrelevant. Testimony has shown here that once the property was bought by the networks, they were then able to get rid of the people who were furnishing the services in connection with it, and continue with their own personnel to service it.

The thing they were buying was the package; that has been so testified.

Mr. KINTNER. I find it hard personally to equate that situation with a tangible product.

We have had experience with services which are ancillary to correspondence courses, and this sort of thing. We have done some work in that area against correspondence schools where they were selling courses. I find it hard to draw a parallel between that type of situation and the one that you mention, or indeed to see this as a product.

Mr. LISHMAN. Mr. Kintner, if someone sells a movie script, would you consider that a property?

Mr. KINTNER. It may be a property in the broad sense, but we deal traditionally with the sale of commodities in interstate commerce, or in services where those services are incidental and part of the sale of commodities.

There has always been a debate as to how far our jurisdiction might go in connection with some of these service situations. I would say that this one that you pose is pretty farfetched.

Mr. LISHMAN. I submit it is absolutely clear that this show format was a product, the same as a movie script or a scenario is, when the author sells it as a product, and takes a capital gain or whatever tax treatment he may on it. He is not selling a service. He is selling a product. That product has been the result of brain work of the people who put it together. If this is a product, and you have 12 producers all competing with their product, with networks and with the advertisers, and one of the owners of the product induces a network or an advertiser to buy the product, without letting him know that the value of the product is based on deceit, don't you think there has been an offense under section 5 of the Federal Trade Commission Act?

Mr. KINTNER. You mean a failure to disclose all parts of the transaction.

Mr. LISHMAN. He has deceitfully sold his product to a network or to an advertiser.

Mr. KINTNER. Mr. Lishman, I can only reply, as I did before, that I find this line of reasoning somewhat farfetched.

Mr. LISHMAN. It may be farfetched.

Mr. KINTNER. I am just a country lawyer.

Mr. LISHMAN. Maybe you are just a country lawyer. I think you understand what I am driving at, Mr. Kintner, very well.

Mr. KINTNER. I certainly do.

Mr. LISHMAN. So I will take you over it again.

Mr. KINTNER. I disagree with your basic thesis.

Mr. LISHMAN. What about the basic thesis do you disagree with?

Mr. KINTNER. That you may equate a television program with a package of nylons or Post Toasties. I find that a little farfetched.

Mr. LISHMAN. What is the primary purpose of a television program?

Mr. KINTNER. I presume that the industry would say to entertain.

Mr. LISHMAN. You presume that?

Mr. KINTNER. Yes.

Mr. LISHMAN. Would you presume to say that the primary purpose is not to sell a product?

Mr. KINTNER. Oh, yes; that is the purpose as well.

You spoke of the primary purpose. If they don't entertain, the people will not watch it.

Mr. LISHMAN. We have the testimony here of Mr. Kletter, and we have the testimony of others here that, they live and die by ratings. If the product does not have a good rating, it won't sell their product and they don't want it.

Mr. KINTNER. I am sure that is sound reasoning.

Mr. LISHMAN. They conceive of the program in its entirety as to the advertising. They do not divorce the obvious commercials during the course of the program from the entire content of the format.

Does the Federal Trade Commission draw a distinction?

Mr. KINTNER. That is the purport of the letter which I sent to your chairman.

Mr. LISHMAN. That is apparently entirely contrary to the testimony we have received here, from both sponsors and producers, and the networks.

Mr. KINTNER. I am speaking as a lawyer, Mr. Lishman, not as a businessman.

Mr. LISHMAN. Wouldn't you believe it to be unfair competition for a person to make TV quiz program property valuable by deceit and his competitors have not stooped to that practice?

Mr. KINTNER. I would say, Mr. Lishman, that it would be reasonable to conclude, as you obviously did from your question, that there is unfairness to the person not using the methods that you mentioned. But whether that unfairness is such as to fall within the purview of the Federal Trade Commission Act is another question.

As I have indicated, I think there is considerable doubt.

Mr. LISHMAN. In that connection, I would like to read from two portions of *Federal Trade Commission v. Keppel*, the 1934 Supreme Court case which you referred to this morning.

Mr. Justice Stone stated:

Neither the language nor the history of the act—

he is referring to the Federal Trade Commission Act—

suggests that Congress intended to confine the forbidden methods to fixed and unyielding categories.

You have testified that unless an act fell within some precedent which was regarded by the Commission as warranting action, you ordinarily did not undertake such action.

How do you reconcile that Commission position with the express language of Mr. Justice Stone, stating that language and history of the act suggest that Congress never intended to confine the forbidden methods to fixed and unyielding categories.

Mr. KINTNER. I agree with that. I have cited it in arguments to the court many times to sustain a Commission position. However, I

am sure that Congress didn't intend that we expand our jurisdiction under that act to the limits of human imagination.

There were some limits, and those limits have generally been fixed by the courts.

I mentioned two of these cases this morning. I have the citations for you. The *Koch v. Federal Trade Commission*. The citation for that is 206 F. 2d, 311, 1950 case in the sixth circuit. The 1953 case in the sixth circuit.

The other is the *Scientific Manufacturing Company, Inc.*, 124 F. 2d 604, a third circuit case in 1941.

As I indicated, those cases generally held that we should stay out of this area of opinions expressed in books. There is this quotation from the *Keppel* case on page 313 that may be of interest:

It is true that the statute does not authorize regulation which has no purpose other than that of relieving merchants from troublesome competition or of censoring the morals of businessmen.

Then the court went on to point out that here they were exploiting children by a lottery method. That method was directly used in the distribution of merchandise.

Mr. LISHMAN. I would like to button this thing right down.

It is a fact that the *Keppel* case does not involve a question of product misrepresentation, is that correct?

Mr. KINTNER. That is correct.

Mr. LISHMAN. It involved a merchandising lottery, is that correct?

Mr. KINTNER. That is correct.

Mr. LISHMAN. You admit, according to the report made to Congress, that you do have jurisdiction over pretended contests of skill?

Mr. KINTNER. No. I think I perhaps better read the No. 15 in full for the record.

Mr. LISHMAN. It was read in full twice.

Mr. KINTNER. Beg pardon?

Mr. LISHMAN. It has been read, in full, into the record, twice.

Mr. KINTNER (reading):

Selling or distributing punchboards or other lottery devices which are to be or may be used in the sale of merchandise by lot or chances, using merchandising schemes based on lot or chances, or on a pretended contest of skill.

I think you find the last phrase relates to the whole of that 15.

We have explained the context in which these matters arise, namely, a situation where a person is convinced that he is engaged in a contest or game of skill and there is really no contest or game of skill to it.

Mr. LISHMAN. I submit that is your interpretation. And to me as a lawyer, it flouts the obvious meaning of the words.

However, I won't go into that.

Mr. KINTNER. We lawyers do sometimes differ.

Mr. LISHMAN. Yes.

I do want to point out in the *Keppel* case which you have relied on so heavily, which does not involve product misrepresentation, that the court did say, and I would like to get your comments on what these words of the court mean in connection with our particular problem and not in connection with the problem of lotteries.

The court said in its opinion:

A method of competition which casts upon one's competitors the burden of the loss of business unless they will descend to a practice which they are under

a powerful moral compulsion not to adopt, even though it is not criminal, was thought to involve the kind of unfairness at which the statute—

meaning the Federal Trade Commission Act—

was aimed.

I would like to have your comments as to what you believe that language means.

Mr. KINTNER. I think that the language can only be read in the light of the factual situation which was before the court at that time, namely, the lottery method. The quotation that I gave you a while ago immediately follows that. I think you have to read the whole opinion to get the meaning of it and its precedent value.

Mr. LISHMAN. Do you not think that there was a method of competition here where competitors had the burden of losing their business unless they descended to the same level as the ones who were practicing deceit?

Mr. KINTNER. Yes, undoubtedly so.

Mr. LISHMAN. Wasn't this competition not only between the advertisers or sponsors, but also competition between the producers of the product, namely, the program itself?

Mr. KINTNER. There was competition, certainly, in the situation that you mention.

Again I invite your attention to the fact that there is a question as to whether it is covered by the statute.

Mr. LISHMAN. The Supreme Court said that even though it is not criminal, that kind of compulsion involves the kind of unfairness at which the statute was aimed.

Mr. KINTNER. Even opinions of the Supreme Court must be interpreted carefully by lawyers in the light of the facts of the case and the context of the whole opinion.

I suppose that we as lawyers, if we take fragments out of opinions, could quote authority for almost anything.

Mr. LISHMAN. I am talking this language in the context of Mr. Justice Stone's opening statement.

Mr. KINTNER. I have high regard for Mr. Justice Stone, but I am sure that even he would have said—he was a teacher at Columbia—or warned his students that they had to look at the facts of the case in the case.

Mr. LISHMAN. As I understand your testimony this morning, Mr. Kintner, there was only one case in 1956, which involved the "Big Surprise," where the staff or some members of the staff believed that you had jurisdiction to go into a situation similar to the ones that have been disclosed in the testimony before us during the past week. Is that correct?

Mr. KINTNER. As far as we know, that is correct. We are not sure that the facts that were alleged in that matter were as alleged. Our investigation was only a preliminary matter, and two members of the staff felt that we had jurisdiction. The matter was never resolved by the senior members of the staff, that is, the jurisdictional question, or resolved by the Commission because there was no need for corrective action.

Mr. LISHMAN. I am going to come to a case where the Commission apparently did take corrective action. I am referring to the Hammell

case. It is in your docket 7304. So that you will understand it, I will briefly outline some of the facts in that case.

In addition to Arthur Hammell, four other firms were involved with which he was associated. They were called Advertising Associates of America, Inc., Teleradio Advertisers, Inc., United Publicity, Inc., and Teleradio Advertisers.

Your Commission issued a complaint November 18, 1958, stating that Hammell, on behalf of himself and the associated firms, entered into contracts for advertising plans with TV and radio stations and with local merchants. The latter were to receive radio and TV advertising for their businesses, while the stations were to receive certain percentages of the merchants' payments to Hammell.

Hammell promised to provide the advertising scripts, as a product, as well as the prizes involved in the TV and radio programs. "Juvenile Delinquency Essay Contests" was the title of one, "Safety on the Highways Contest" was another, and "Millionaire Weekend Trips to Las Vegas" was another.

These were cited by the complaint of your Commission as typical of the contest programs offered by Hammell. Your complaint alleged that Hammell made false claims to both the stations and the merchants in selling these plans, and that is precisely what the producers have done in this case. They have made false claims both to the networks and to the advertisers when they were selling their programs to them.

Instead of being called "Millionaire's Weekend Trip to Las Vegas," they sold "Twenty-One."

Instead of selling "Safety On The Highways Contest," they sold "Dotto."

Instead of calling it "Tic-Tac-Dough," they called it "Juvenile Delinquency Essay."

The stations were led to believe that all checks obtained from the merchants would be made payable to them. In reality, many checks were made payable to the respondents.

In that complaint, the Federal Trade Commission alleged that Teleradio Advertisers and its affiliates falsely claimed that they would provide free trips to Las Vegas or cash substitutes therefor for successful contestants.

In our situation, we have a situation where false claims were made to innocent contestants that they could win large prize moneys by participating in the program.

I would like, Mr. Kintner, for you to reflect on that case and see if that may not cause you to reconsider some of the testimony you have given?

Mr. KINTNER. May I ask which section of the statute that was brought under?

Mr. LISHMAN. Under section 5.

Mr. McCAULEY. Do you know the status of that case?

Is that pending before the Commission?

Mr. LISHMAN. No. It was disposed of by a consent order entered by the Federal Trade Commission in May 1959.

Mr. KINTNER. Without knowing anything about the case until this minute, I would say that there must have been false and misleading advertising in this instance, and our jurisdiction apparently was bottomed on that conclusion. I would like, since I am not familiar

with this case, to have an opportunity to check it out and submit a statement at this point for the record.

Mr. LISHMAN. We certainly would like that.

The CHAIRMAN. Let the statement be received for the record.

(The information referred to follows:)

EXHIBIT A

UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

DOCKET 7304

In the Matter of Advertisers Associates of America, Inc., a corporation; Teleradio Advertisers, Inc., a corporation; United Publicity, Inc., a corporation; and Arthur Hammell, individually and as an officer of said corporations, and trading as Teleradio Advertisers

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Advertisers Associates of America, Inc., a corporation, Teleradio Advertisers, Inc., a corporation, United Publicity, Inc., a corporation, and Arthur Hammell, individually and as an officer of said corporations and trading as Teleradio Advertisers, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH ONE: Respondent Advertisers Associates of America, Inc., is a corporation organized and existing under the laws of the State of New York; respondent Teleradio Advertisers, Inc., is a corporation organized and existing under the laws of the State of New York; respondent United Publicity, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey; respondent Arthur Hammell is an officer of said corporations and trades and does business as Teleradio Advertisers. He formulated, directed and controlled the policies, acts and practices of the corporate respondents, including those hereinafter set forth. The principal office and place of business of all said respondents is located in the Empire State Building at 350 Fifth Avenue, New York, New York.

PARAGRAPH TWO: Said respondent corporations were engaged in the business of offering for sale, and selling, advertising promotional plans to radio and television stations and to merchants in areas surrounding such stations, and entering into contracts with respect to said plans with stations and merchants. Said plans included contests of various types and the awarding of prizes furnished by respondents to the winners. Respondent Arthur Hammell, trading as Teleradio Advertisers, is now, and for more than one year last past has been, engaged in the same business as heretofore described. The corporate respondents, in the conduct of their business, have caused, and respondent Arthur Hammell trading as Teleradio Advertisers also has caused, and is now causing, merchandise to be awarded as prizes and various types of advertising and promotional material to be shipped from New York, N.Y., or other locations, to, into and through states of the United States other than the states in which such shipments originated, to those who entered into contracts with them.

There has been, at all times mentioned herein, a substantial course of trade in said merchandise and advertising material in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of such trade in said commerce has been substantial.

PARAGRAPH THREE: In connection with the sale of said advertising and sales promotional plans to radio and television stations and to merchants in areas surrounding such stations, respondent corporations have made, and respondent Arthur Hammell trading as Teleradio Advertisers is still making, oral representations, through sales representatives, to said radio and television stations and merchants.

Respondents' method of operation is substantially as follows, varying in certain aspects in different localities:

Respondent Arthur Hammell, operating through one of said respondent corporations or trading as Teleradio Advertisers, negotiates and enters into con-

tracts, through sales representatives, with radio and television broadcasting companies whereby respondents agree to secure a prescribed number of local merchants to advertise over said broadcasting station in conjunction with a promotional project or prize contest. The local merchants are to receive television or broadcasting advertising of their business for a certain number of weeks. Respondents agree to furnish the advertising script, entry blanks and related advertising matter and prizes to the winner of contests to be sponsored by said merchants over the stations as a part of the promotion. Respondents further agree to pay the broadcasting or television stations a certain percentage, usually one half or one third, of the amounts subscribed. After the execution of such contracts with the stations, representatives of the respondent corporations contact local merchants and enter into contracts with them. Said merchants are to receive a certain stipulated amount of advertising for specified periods of time for a specified amount to be paid in installments or in full at a cash discount. The merchants agree, after representations hereinafter described have been made to them, to handle and distribute official entry blanks to contests and to display other advertising material to be furnished by the respondents with respect thereto.

Some of the contests are described as "A Millionaire's Weekend Trip to Las Vegas," "Juvenile Delinquency Essay Contest," and "Safety On the Highways Essay Contest."

PARAGRAPH FOUR: Among and typical of the representations made by the sales representatives of respondents to said radio and television broadcasting companies and local merchants, are the following:

1. That all checks obtained from the merchants subscribing to the promotion would be made payable to the broadcasting or television station and transmitted without delay to said stations.

2. That the agents of the respondents soliciting the merchants' subscriptions were agents and representatives of the radio or television stations.

3. That only one shop or business of a kind in a specific area would be permitted to sponsor or advertise said promotion.

4. That all of the leading businessmen in the area were subscribing to and supporting this promotion.

5. That the merchants could exhibit their merchandise on the television showings and that someone would call at the merchants' establishment to pick up said merchandise.

6. That respondents would run an advertisement in the local newspaper advertising said promotion.

7. That respondents would provide a free trip to Las Vegas for a weekend as a prize to each contest winner as declared by the broadcasting or television station or in lieu thereof \$250 and would furnish other prizes, depending upon the nature of the contest.

8. That the backdrop advertising to be shown over television would conform to the sample shown the merchant subscribers at the time of subscription.

9. That respondents would furnish each merchant subscribing to the promotion with a desirable and attractive display bearing the call letters of the radio station.

10. That respondents would write the commercial copy for each merchant subscriber and that said commercial copy was to be changed monthly.

PARAGRAPH FIVE: The foregoing representations were false, misleading and deceptive. In truth and in fact:

1. All of the checks obtained from the merchants subscribing to the promotion were not made payable to the broadcasting or television stations, but many were made to respondents, and some of the checks which were made payable to the broadcasting and television stations or to said stations and respondents jointly were endorsed by respondents without the authority of said stations and amounts due said stations were retained by respondents.

2. The sales representatives of the respondents soliciting the merchants' subscriptions were not agents or representatives of the radio or television stations.

3. More than one shop or business of a kind in a specific area was permitted to sponsor or advertise said promotion.

4. All of the leading businessmen in the area were not subscribing to and supporting this promotion.

5. Subscribing merchants were not allowed to exhibit their merchandise on television and no one called at the subscribing merchants' places of business to pick up any such merchandise.

6. Respondents did not run any advertisement in a local newspaper advertising said promotion.

7. Respondents did not provide a free trip to Las Vegas for a weekend as a prize to each contest winner as declared by the broadcasting or television station, nor were said contest winners awarded a \$250 payment in lieu thereof.

8. The actual backdrop advertising used in television broadcasts did not conform in material respects to the sample shown the merchant subscribers at the time of subscription.

9. Respondents did not furnish subscribing merchants with a desirable or attractive display bearing the call letters of the radio station.

10. Respondents did not change the commercial copy monthly.

PARAGRAPH SIX: In the course and conduct of their business respondents are in direct and substantial competition with corporations, firms and individuals likewise engaged in the sale of advertising and sales promotional plans to radio and television stations and to merchants in areas surrounding such stations, in commerce.

PARAGRAPH SEVEN: The use by the respondents of the aforesaid false, misleading and deceptive statements and practices has had, and now has, the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that said statements and representations were, and are, true and to induce a substantial number thereof to subscribe to and purchase respondents' said advertising and sales promotional plans because of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is now being, unfairly diverted to the respondents from their competitors and substantial injury has been, and is now being, done to competition in commerce.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission, on this 18th day of November, A.D. 1958, issues its complaint against said respondents.

NOTICE

Notice is hereby given to each of the respondents hereinbefore named that the 21st day of January, A.D. 1959, at 10 o'clock is hereby fixed as the time Federal Trade Commission Building, Washington, D.C. as the place when and where a hearing will be had before a hearing examiner of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the thirtieth (30th) day after service of it upon you. Such answer shall contain a concise statement of the facts constituting the ground of defense and a specific admission, denial or explanation of each fact alleged in the complaint or, if respondents are without knowledge thereof, a statement to that effect.

If respondents elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that respondents admit all material allegations to be true. Such an answer shall constitute a waiver of hearing as to facts so alleged, and an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding shall be issued by the hearing examiner. In such answer, respondents may, however, reserve the right to submit proposed findings and conclusions and the right to appeal under Section 3.22 of the Commission's Rules of Practice for Adjudicative Proceedings.

If any respondent elects to negotiate a consent order, it shall be done in accordance with Section 3.25 of the Commission's Rules of Practice.

Failure to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize a hearing examiner without further notice to respondents, to find the facts to be as alleged in the complaint, to conduct a hearing to determine the form of order, and, thereafter, to enter an initial decision containing such findings and order.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this 18th day of November, 1958.

By the Commission.

[SEAL]

ROBERT M. PARRISH, *Secretary.*

EXHIBIT B

UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: John W. Gwynne, Chairman, Robert T. Secrest, Sigurd Anderson, William C. Kern, Edward T. Tait.

DOCKET NO. 7304

In the Matter of Advertisers Associates of America, Inc., a corporation; Teleradio Advertisers, Inc., a corporation; United Publicity, Inc., a corporation; and Arthur Hammell, individually and as an officer of said corporations, and trading as Teleradio Advertisers

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 6th day of May, 1959, become the decision of the Commission; and, accordingly:

IT IS ORDERED that the respondents named in the caption hereof shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

By the Commission.

[SEAL]

ISSUED: May 6, 1959.

ROBERT M. PARRISH, *Secretary*.

UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

Docket No. 7304—Filed Jan. 30, 1959

In the Matter of Advertisers Associates of America, Inc., a corporation; Teleradio Advertisers, Inc., a corporation; United Publicity, Inc., a corporation; and Arthur Hammell, individually and as an officer of said corporations, and trading as Teleradio Advertisers

INITIAL DECISION

By Abner E. Lipscomb, Hearing Examiner.

Morton Nesmith, for the Commission:

Norman D. Levy, New York, New York, for the Respondents.

The complaint herein was issued on November 18, 1958, charging Respondents with violation of the Federal Trade Commission Act by the use of false, misleading and deceptive statements and practices in connection with their business of offering for sale and selling advertising promotional plans to radio and television stations and to merchants in areas surrounding such stations, and entering into contracts with stations and merchants with respect to such plans, which included contests of various types and the awarding of prizes furnished by Respondents to the winners.

Thereafter, on January 14, 1959, Respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease and Desist, which was approved by the Director and an Assistant Director of the Commission's Bureau of Litigation, and thereafter submitted to the Hearing Examiner for consideration.

The agreement identifies Respondents Advertisers Associates of America, Inc., and Teleradio Advertisers, Inc., as New York corporations; Respondent United Publicity, Inc., as a New Jersey corporation; and Respondent Arthur Hammell as an officer of said corporations, trading and doing business as Teleradio Advertisers; all Respondents having their principal office and place of business located in the Empire State Building at 350 Fifth Avenue, New York, New York.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondents waive any further procedure before the Hearing Examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree

that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only, and does not constitute an admission by the Respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the Hearing Examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Cease And Desist; finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

IT IS ORDERED that Respondents, Advertisers Associates of America, Inc., a corporation, and its officers; Teleradio Advertisers, Inc., a corporation, and its officers; United Publicity, Inc., a corporation, and its officers; and Arthur Hammell, individually and as an officer of said corporations and trading as Teleradio Advertisers, or trading under any other name or names; and said Respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale or selling of advertising promotional plans and materials in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Withholding any sums of money due radio or television broadcasting stations pursuant to contracts hereafter executed or hereafter endorsing checks made payable to said stations without authority;

2. Hereafter representing directly or by implication:

(a) That their sales representatives or agents are representatives or agents of radio or television broadcasting stations, unless such station has authorized such representation;

(b) That only one business of a kind in a specific area will be permitted to advertise a promotional project unless such is the fact;

(c) That all of the leading businessmen in a community are subscribing to or supporting a promotional project;

(d) That subscribing merchants will be allowed to exhibit their merchandise on television or that such merchandise will be picked up at the merchant's place of business prior to the telecast;

(e) That they will run an advertisement in a local newspaper concerning their promotional project;

(f) That they will provide a free trip to Las Vegas for a week-end as a prize to each contest winner as declared by the radio or television broadcasting station, or give in lieu thereof \$250.00 to said contest winner, or misrepresenting in any manner the nature of the prize to be awarded in any contest;

(g) That the backdrop advertising used in television broadcasts will conform to the sample shown merchants at the time of subscription;

(h) That they will furnish subscribing merchants with a desirable or attractive display bearing the call letters of the radio station; or misrepresenting the nature of the display to be furnished;

(i) That they will change the commercial copy monthly.

ABNER E. LIPSCOMB,
Hearing Examiner.

JANUARY 30, 1959.

MR. LASHMAN. What I would like to find out is why this man Hammell, who went around selling his programs and did it by means of making false claims to both the television station and the advertisers apparently was not in a gray area as far as the Commission was concerned; you took after him, and then you had a consent order entered against him.

Mr. KINTNER. Did this involve the quality of the program itself or did it involve representations made with respect to the nature of the program. That might be material.

Mr. LISHMAN. It involved false claims that were made by the owner of the programs as to the rewards that would be accompanying.

Mr. KINTNER. Until I get all the facts on this, including the staff opinion as to the jurisdiction and the conclusions of the Commission, I cannot distinguish our comment as I would like to comment as a lawyer on the case. I will submit a statement for the record on this particular case with such comments as I think will be relevant to the situation that you have in mind.

(See p. 565.)

Mr. LISHMAN. Yes, sir. Now, Mr. Kintner, we have to attempt here to show in our record what is considered to be the nature of the modern American commercial TV. So I will ask you a number of foundation questions before coming down to specifics. Do you believe it is accurate to say that the primary purpose of a sponsored TV program is to assist in the selling of the sponsor's products?

Mr. KINTNER. I hardly know how to answer that responsively. I suppose the basic purpose of commercial television is to sell advertising time. So in that sense you are correct. But on the other hand, if the program is not good, if it doesn't have listening appeal, if it is not entertaining, or otherwise valuable or educational, to a segment of people who will watch it, then I suppose it is of very little value.

Mr. LISHMAN. I was talking about what motivated the sponsor to go out and pay \$50,000 for a half-hour period to a network and pay \$2 and \$3 million a year.

Mr. KINTNER. He is motivated by a desire to sell his product, certainly, or to promote the good name of his product which will result in sales.

Mr. LISHMAN. Isn't the substantive TV program, whether you call it a dramatic production, panel show, or quiz show, or whatnot, an advertising tool used to attract as large a viewing audience as possible?

Mr. KINTNER. In the sense in which you handle it. In a more technical sense from the standpoint of a law enforcement agency, it is the spot announcements, the advertising that are of primary concern to us. We do spend about two-fifths of our budget on that line of false and misleading advertising and deceptive practices. It is the grist for our mill, really.

Mr. LISHMAN. Is it fair to say that the hope of the advertiser is that the program will be as popular as possible and so reflected in audience ratings given out by Trendex, et cetera?

Mr. KINTNER. That sounds reasonable to me.

Mr. LISHMAN. Is it fair to say that the advertiser wants as many people as possible, prospective consumers of his products, to be exposed to the commercials on the program?

Mr. KINTNER. I think so.

Mr. LISHMAN. Is it not the advertiser's belief, or is it not fair to say that generally speaking there will be a correlation between the size of the TV viewing audience as reflected in the ratings and the prospects for sales of his products?

Mr. KINTNER. Yes, I think that is a fair characterization.

Mr. LISHMAN. Mr. Kletter, who is the vice president of Pharmaceuticals, which markets Geritol, has so testified. He stated that his

company had an intense interest in the ratings. We gathered from his testimony that if the ratings went down on the show, they would not be so anxious to spend the vast sums of money which he indicated were spent, let us say, on the product Geritol.

Mr. KINTNER. I am sure that must be true.

Mr. LISHMAN. Do you know, for example, that 40 percent of the cost of that product was apparently advertising?

Mr. KINTNER. No, I didn't know that.

Mr. LISHMAN. Mr. Kletter has so testified.

Mr. KINTNER. If you state it as a fact, I would accept it as such.

Mr. LISHMAN. He has so testified. Have you ever watched the "Twenty-One" quiz show, either privately or on the kinescope shown last week before this committee?

Mr. KINTNER. I have not, to answer your last question first, watched the kinescope before this committee. I have on very rare occasions watched TV, and on even rarer occasions watched the contest. I am a very busy man and I have devoted more of my time to legal activities—in my job and in the bar association—than to watching TV. This just shows my lack of good taste, I guess.

Mr. LISHMAN. During the few times that you looked at "Twenty-One," did you have any doubt that the purpose of exposing the trade name Geritol prominently was to create in the minds of the viewers an identification between the highly rated quiz program, "Twenty-One," and the product Geritol?

Mr. KINTNER. No, I wouldn't have any doubt on that. Their purpose was to sell the product, bring its name before the American people. The program was a means for getting in their commercials, just as newspaper advertising is a means of bringing to the readers of the newspaper who don't buy the paper for advertising, but read it, nevertheless, the products of those who advertise in the newspapers, periodicals, magazines.

Mr. LISHMAN. Have you ever viewed the television quiz show "Dotto?"

Mr. KINTNER. I don't believe I have.

Mr. LISHMAN. Going back to Geritol, do you remember that the trade name Geritol was printed in large letters both above and below Jack Barry, the master of ceremonies, on the program?

Mr. KINTNER. Yes, I believe that is correct.

Mr. LISHMAN. Is there any doubt in your mind that the purpose of exposing this trade name thus prominently was to create in the minds of the viewers another indication that their product was of the same high quality that the program they were viewing at that time was regarded?

Mr. KINTNER. I don't know. I think perhaps you are getting a little off the reservation there. I am not sure I should agree with you. I think basically we have no difference of opinion. They displayed their name, they made their spot announcement on a popular program for the purpose of selling their product. With that I would be in hearty accord with you. I am not trying to be obtuse. I am just trying to be as responsive as I can to your questions. I realize that you have a job to do, the same as I have.

Mr. LISHMAN. Yes, sir. Since the object of the advertising on TV is to attract the largest possible viewing audience, might not the FTC have some interest in the methods used to attract that audience?

Mr. KINTNER. On the programing I would say that this should be the primary concern of the Federal Communications Commission rather than of the Federal Trade Commission. On the advertising portions of the program, very clearly that falls within our jurisdiction.

Mr. LISHMAN. In view of the intimate relationship between the program and the product, do you think it realistic to separate the methods used to represent the product itself from the methods used to attract a large audience before which to parade the sponsor's commercial sales pitch?

Mr. KINTNER. I would say so. I go back to this wrestling example, which impresses me very much. I don't know where we would end if we started down that road. If the Congress said you must do this, we would do it the best we could. Where we would end, I don't know. I think you have to make a value judgment at that point whether you are going into that area. If you go into the area with respect to the factual situation you have in mind, I think you have to extend your area a little bit to cover other situations. Frankly I am puzzled where we would end and where it would take us, assuming that the courts would let us. The courts, as I have pointed out, said we could not censor books that had the same false and misleading and fraudulent statements that the advertising of the same product had, even though in the *Koch* case the good doctor presumably wrote both the advertising and the book. The court said we could stop the advertising but stopping the book was another matter.

Mr. LISHMAN. Several witnesses testified last week that to represent a TV program as an honest contest of knowledge and skill whereas in fact contestants were coached in advance was a deceptive practice. Would you agree with those witnesses?

Mr. KINTNER. Yes, it is a deceptive practice, if that is true. It is a deceptive practice in the generally accepted use of that term. But whether it is a deceptive practice in the context of our statute is, of course, another question.

Mr. LISHMAN. Would you agree that a TV program along with the commercials in it is "in commerce" within the meaning of your act?

Mr. KINTNER. Yes, that is the basis of the grant of Federal jurisdiction to the Federal Communications Commission, that television and radio is in commerce, just as we have a grant of authority with respect to false and misleading advertising, and other practices being in commerce. The jurisdiction typically attaches to the movement of goods in interstate commerce.

Mr. LISHMAN. Mr. Kintner, would you agree that these rigged quiz programs on TV constitute a deceptive act or practice in commerce within the meaning of section 5 of the act?

Mr. KINTNER. Our letter covers that. I have said that I think there is considerable doubt whether it covers such a practice under section 5. I don't think there is any doubt, assuming the truthfulness of the disclosures made here before this committee, that there was deception practiced upon the public and the viewers.

Mr. LISHMAN. Don't you agree that there is a distinction between entertainment which the viewer knows is going to be part fix and a wrestling match which viewers know are fixed and in some States are not allowed to be called wrestling matches or contests, and the kind of deception that was practiced in the TV quiz shows?

Mr. KINTNER. I am inclined to think that all entertainment amounts to a certain amount of deception, going back 150 years to the old medicine shows, and the sleight of hand artist who had a remedy he wanted to sell. He was using entertainment to collect his crowd, and then he made his pitch for his remedy. I don't think you have too much of a different situation here. The local authorities used to take care of the medicine man if he got too outrageous in his entertainment, if it offended public morals and good taste, or was too deceptive. Perhaps if a remedy in law does not exist to cover this situation, perhaps one should be devised. I do know that the television industry should be far more responsible than the old fashioned pitchman, because there is more involved and many more people and much more investment. I would imagine that this has been a considerable blow to the industry.

Mr. LISHMAN. Mr. Kintner, the testimony before the subcommittee has been to the effect that the deception was absolutely necessary to the success of the programs.

Mr. KINTNER. I am not willing to assume that every program is deceptive, Mr. Lishman.

Mr. LISHMAN. Let us confine ourselves to the TV quiz programs concerning which we have taken testimony.

Mr. KINTNER. For my purposes, as your witness, I would not assume that, either. I don't know.

Mr. LISHMAN. The testimony was clear before us that they could not have what they consider a successful TV quiz show without exercising deception. They said they had budget considerations that had to be taken into account. They had to liven the show up in order to keep its ratings up, so that it would enable them to sell their product at a higher price than they otherwise would. Isn't that kind of deception a little different than the kind of deception which would be present, let us say, in a so-called wrestling exhibition?

Mr. KINTNER. Frankly I don't know. I suppose there are some wrestling matches that are on the up and up, or particularly if the contestants happen to get angry. I am no judge. I could not say. I don't watch wrestling matches either, except on very rare occasions when I have nothing else to do.

Mr. LISHMAN. Don't you think it was the purpose here to bring before the American public persons of superior intelligence and impress the American public that they were honest contests of knowledge and thereby have a vast and attentive listening audience which they would otherwise not have?

Mr. KINTNER. I suppose that might be a reasonable conclusion to be drawn from all the testimony that you have adduced. I have not heard the testimony. I read only the press reports. It sounds like a reasonable characterization. I would not want to testify that all these programs are rigged because I don't know.

Mr. LISHMAN. In the case of the three shows that we have been concerned with, "Dotto," "Tic-Tac-Dough," and "Twenty-One," would you be concerned with those after you studied this record here, and you come to the conclusion that deception was practiced in order to obtain a vast consumer audience for a particular product or products that were being advertised?

Mr. KINTNER. You put me in the position, as I have a quasi-judicial function as one of the members of the Commission, of adjudicating

something, of expressing an opinion on something that I do not have the facts on. We operate through hearing examiners who conduct adversary proceedings and they submit a record and initial decision, and this is argued before the Commission on appeal of either party. The Commission speaks authoritatively only with respect to its decisions arrived at in that manner. I respectfully suggest that you are pushing me too far in respect to my quasi-judicial function. I am sure you appreciate that.

Mr. LISHMAN. Yes, sir. Is it fair to say that a primary goal of the FTC is to prevent insofar as possible methods, acts, and practices which may injure competitors who adhere to a commonly accepted level of ethical business conduct?

Mr. KINTNER. That, broadly speaking, is correct, but the statement has no meaning except in the context of section 5, the language of the statute and the cases that come out of that statute, out of the Commission, and have withstood the test of court review.

Mr. LISHMAN. Is it also true that another purpose of the Federal Trade Commission is to protect consumers from fraudulent and deceptive practices whether by way of advertising, selling or producing a product?

Mr. KINTNER. In reply to some very sharp and able questions from Mr. Rogers this morning, I indicated that basically I thought the purpose of the Federal Trade Commission Act was to protect the free enterprise competitive system, to keep the channels of business free and clear against practices which were prohibited by law. We have, I am sure, an incidental purpose even in our antimonopoly work of protecting the consumers. With respect to the false and misleading advertising work that we do, we protect directly, I believe, both the consumers and competing businessmen. With respect to our labeling statutes, we certainly do protect most directly the consumers. But again the purpose of the labeling statutes was to protect the scrupulous businessman against the practices of the unscrupulous businessman.

Mr. LISHMAN. Mr. Kintner, in view of the fact that the appeal of the fixed quiz shows like "Twenty-One," "Dotto," and "Tic-Tac-Dough" rests largely on the deliberately contrived delusion that they are honestly conducted contests of knowledge, do you think that the increased sales of the sponsor's product at the expense of their competitors were procured unfairly?

Mr. KINTNER. You are getting back into this adjudicatory area. We have gone pretty far on this to say that it is a gray area. I have to be mindful that we get into a gray area which we may adjudicate some time. I would prefer that you not press me too far there. Somebody will disqualify me some time on a case.

Mr. LISHMAN. We have evidence that in more than 75 percent of the shows on "Tic-Tac-Dough" they were fixed. We have similar evidence with respect to the two other shows mentioned. It seems to me that we might ask for some kind of answer to this question. It would not necessarily take you into your role of adjudicator.

Mr. KINTNER. Aren't they still entitled to a formal trial and that the facts be adduced in an adversary proceeding with counsel present, a chance to submit rebuttal evidence, and then an examination of whether there is a violation under the law.

Mr. LISHMAN. That is one of the things we are trying to find out, Mr. Kintner, why the Federal Trade Commission did not take this

kind of action and get them in the process or adjudication long before this.

Mr. KINTNER. You assume, which I do not concede, myself, that this was a violation of our statute. I have pointed out that it was a gray area. That the primary jurisdiction, if any, would rest with the Federal Communications Commission, because it involved the programming. I am not unmindful of the fact that the Communications Commission has its inhibitions imposed by the Congress against censorship and I don't know how far that applies to this violation. If you assume a violation of law, you are asking me to judge it here and I could not do it. I don't assume a violation of the law. I say as a lawyer that there is grave doubt whether our statute was intended to cover this situation, and particularly since the passage of our act there has been set up the Federal Communications Commission to regulate the industry.

Mr. ROGERS. Mr. Lishman, if you will yield for one question.

Mr. Kintner, how would you ever find out if there has been a violation of the law if you do not institute some sort of proceedings to test this sort of thing?

Mr. KINTNER. We do not institute proceedings in all matters where we have doubt. We try to use our judgment and reason from what the courts have said in the past. That is why I brought to your attention the *Koch* case and the *Scientific Manufacturing Company* case, to indicate the areas in which the court has told us to stay away.

Mr. ROGERS. As I said this morning, I do not want to argue the question with you. I think when you do that you are certainly invading the jurisdiction of the courts, and when you talk about what jurisdiction you have or do not have, I do not think you have the jurisdiction to take it upon yourself in a gray area or a doubtful area to say we will not prosecute this. We will not bring anything.

We will decide this is not in violation of the law, because that is what you are doing.

Mr. KINTNER. We really cannot bring cases involving all areas of possible violation of the law. It is physically impossible. We have to pick and choose what we consider to be the more significant areas. We have to use other tools. We have to use voluntary tools, and persuasion and education.

For example, we issued advertising guides on pricing which were disseminated by better business bureaus and the Advertising Federation of America, and hundreds of thousands of copies, to attempt to persuade businessmen voluntarily to abide by the law. There were a lot of those situations we could not cover because they were not actually transactions in commerce.

We have to use every tool we can to get as much voluntary adherence to the law, because it is physically impossible to bring every case that comes to our attention.

Mr. ROGERS. That is all I have, Mr. Lishman.

Mr. LISHMAN. Mr. Rogers' question leads me to desire a clarification for the record of this gray area.

Am I correct in understanding that the Commission itself never formally found that there was this gray area? That this gray area was only a gray area in the minds of the staff?

Mr. KINTNER. The Commission has never formally ruled on it, that is correct.

I gave you the best opinion I could give you in the letter addressed to your chairman. I frankly said you could find differences of opinion on the staff as to our jurisdiction. This is almost typical. With nearly 400 lawyers there was always a difference of opinion as to what the law is.

Mr. LISHMAN. Coming to some of the testimony before the subcommittee, I will summarize it.

Mr. Kletter, the pharmaceutical man, the manufacturer of Geritol, testified that he closely followed the TV ratings of the show "Twenty-One" and the other TV shows which his company sponsored. Such ratings, he said, were indications of the program's popularity with the viewing public. Every producer who testified at these hearings said that some degree of rigging over the quiz programs was necessary to provide an exciting and interesting program which would demand a large audience and therefore a high TV rating.

In other words, in these quiz programs there was a direct relationship between high TV rating and the fraud and deception practiced on those programs.

I would like to ask this question: Don't these facts show that the sponsor-advertiser profit directly from the use of rigged TV shows which he uses to put his name and product before the American people.

Mr. KINTNER. Would you repeat the question?

I am concerned about this area of my quasi-judicial function, Mr. Lishman.

Mr. LISHMAN. Don't the facts show, which I have just summarized here, that the sponsor-advertiser profits directly from the use of the rigged TV show which he uses as the vehicle to put his name and his product before the American people.

Mr. KINTNER. I am sure if his sales go up that he has profited.

If you assume that additional fact that his sales went up, he profited.

Mr. LISHMAN. He so testified.

Mr. KINTNER. Unless he paid too much for the program and lost that way.

Mr. LISHMAN. How is it possible, then, to separate such deceptive programing from the narrow direct advertising of the product that occurs during the program.

Mr. KINTNER. For the reasons set out in my letter to Chairman Harris. You have a situation where the television program itself is the means of disseminating at intervals the advertising. That advertising is, under our law, of direct concern to us. The programing and all that goes into it, I think, is of primary concern to the Federal Communications Commission.

If there is a gap in the law that needs filling, then I respectfully suggest that it be filled with reference to that agency which has expertness in this industry.

Mr. LISHMAN. Is it not a fact that the program and the direct advertisements occurring during the course of the program are so intermixed and interrelated as to serve the same purpose, namely, the advancement of the sponsor's interest before the viewing public?

Mr. KINTNER. I don't think so as a legal proposition. We tried to show that with respect to this doctor's book, that the book was just as fraudulent as the advertising, but the court said that you can prohibit the advertising but you can't prohibit the dissemination of the

book. Yet he had a remedy there which was good for about everything including cancer.

We stopped the dissemination of the ad, but the court would not let us stop the dissemination of the book. We thought we were right. But we are not going to try that one again quite that way, I am sure. We would not find very much sympathy in the courts.

Mr. LISHMAN. Don't you think it is really a case of the entire program being one giant merchandising scheme?

Mr. KINTNER. No, I don't, from the standpoint of the enforcement program of my agency.

From your standpoint of attempting to devise legislation, I can see where you can come to such a conclusion.

Mr. LISHMAN. As I understand it, Mr. Kintner, and I want to be very clear on this, the only thing that you would hold the sponsor-advertiser responsible for would be those words which were actually spoken concerning his product, as for example, Geritol: is that correct?

Mr. KINTNER. That is as far as the cases have gone, unless the case you mentioned, with which I am not familiar, has extended the doctrine a little bit by getting at false representations in connection with the sale of the program.

As to that, I will have to submit a statement because I am not familiar with the case at all.

As I get older in the law, I learn an awful lot that I don't know and that I should be careful of what I say with respect to jumping to conclusions.

Mr. LISHMAN. Mr. Kintner, when you consider the very large allocations of money for advertising on these TV programs and putting the manufacturer's name before the public, and when you remember in the case of the show "Twenty-One" that a very sizable portion of these costs are for so-called prizes, and that the \$10,000 weekly for prizes was actually a source of rigging of the show, making it a deceptive and fraudulent program, when you remember all this, how can you maintain that the sponsor-advertiser is responsible only for those comparatively few words during the course of the program in which something is said about his product, Geritol?

Mr. KINTNER. I haven't said that he is not responsible for the advertising. He may well be responsible to the Federal Communications Commission for what is done in this programing.

I am not an expert on that law. From what I see in the present reports, Chairman Doerfer has indicated that he, too, may have a gray area there. I don't want to judge the responsibility of that agency for these practices. I leave that to be ironed out between the committee and that agency. I have enough problems of my own.

Mr. LISHMAN. Mr. Kletter, who is vice president of Pharmaceuticals, testified that these programs were strictly a business matter to them. When he was asked concerning an advance of \$5,000 made to Mr. Van Doren, he said that he looked on that indifferently. He apparently, from his testimony, took the position that the programs in their totality were the way of advancing the interests of Pharmaceuticals, Inc.

Mr. KINTNER. Is he the lawyer?

Mr. LISHMAN. He is sponsor and he knows what he is paying for. He is paying for the entire program. He did not divide up his pay-

ments just for the words used to advertise Geritol. He bought the entire product.

Mr. KINTNER. I don't wish to appear to be contradicting his testimony or any other witness here. I am just speaking from the standpoint of one fairly familiar with the work of my agency and the law under which it operates.

Mr. LISHMAN. I would like to know how the Federal Trade Commission can still keep on insisting on separating the advertising from so-called deceptive entertainment and say if no misrepresentation of the products took place, then the Federal Trade Commission Act does not apply. I still can't understand that.

Mr. KINTNER. I sympathize with you, but I can't change my testimony, Mr. Lishman.

Mr. LISHMAN. Are you familiar with the fact that the subcommittee has in its possession information from certain TV advertisers to the effect that their own sales have been decidedly harmed by the TV quiz shows sponsored by their competitors?

Mr. KINTNER. I know nothing of that, Mr. Lishman.

Mr. LISHMAN. Are you familiar with sales data appearing in various trade journals to the effect that the sales of certain TV quiz show sponsors increased appreciably?

Mr. KINTNER. No, I have no direct information. I do know, as Mr. Babcock testified this morning, that there were representations or questions raised largely by attorneys about the legality of quiz programs in general.

It was Mr. Babcock's conclusion, and I believe I joined him in that conclusion, that there was nothing violative of the Trade Commission Act in the fact that the quiz programs existed, even though they might have diverted business from one competitor to another because of the advertising given to the product using the quiz program type of medium.

Mr. FLYNT. Mr. Lishman, could I interrupt at that point for one clarifying question?

Mr. Kintner, is it your feeling, based on what you just said, that the function of the Federal Trade Commission is to protect competitors rather than the general public?

Mr. KINTNER. I think, sir, it is the function to protect both competitors and the public. I think that the competitive free enterprise system, if it is kept free of restraints of trade, enures to the benefit of the American public. Certainly, as I have indicated, there are some of these acts that we enforce that are of direct benefit to the consumer, who is really the whole public.

Mr. FLYNT. I am sure you do not mean to say that the public interest protection is incidental only as it inures to them as a result of first protecting the competitors.

Mr. KINTNER. Oh, no. Because everything that we do must be done on the basis of the public interest. We have to find the public interest before we issue a complaint. When we issue a complaint we say that it is in the public interest.

Mr. FLYNT. I just want to say also that the public interest is paramount to the interest of a competitor. You had used that expression several times today.

Mr. KINTNER. Yes.

Mr. FLYNT. I think that is the thing that is incidental to the public interest rather than the public interest entering into it only indirectly.

Mr. KINTNER. They are really inseparable. I think that is the point you are trying to make and I would agree with you. Just as it is in the public interest to have disclosures before congressional committees such as this.

Mr. LISHMAN. Mr. Kintner, has the FTC made any investigation to determine whether the sales of products manufactured by sponsors of the TV quiz shows increased or decreased materially during the height of the TV quiz show popularity?

Mr. KINTNER. Not to my knowledge. I think some of these people who expressed concern to us as to the validity or legality of the TV-type program expressed that concern because they felt that sales were being diverted to the businessmen sponsoring these programs.

Mr. LISHMAN. I have a few concluding questions.

We will return, Mr. Kintner, to the September 3, 1959, letter you addressed to Chairman Harris, in which you cite and quote the *Northam Warren* case. When was that case decided?

If I should tell you 1932, would that be correct?

Mr. KINTNER. If you tell me that, I will take your word for it.

Mr. LISHMAN. What was the date of the Wheeler-Lee amendment?

Mr. KINTNER. 1938.

Mr. LISHMAN. In your letter you state that the Commission had attempted to go after this particular company, because they had not announced that testimonials for their product had been paid for, is that correct?

Mr. KINTNER. Yes; that is correct.

The testimonials—or there was no disclosure that the testimonials were purchased. The case did not go to whether or not the testimonials were correct.

Mr. LISHMAN. That is correct.

In other words, you did not challenge the truthfulness of the testimonials?

Mr. KINTNER. That is right.

Mr. LISHMAN. And then you stated in the September 3 letter to our chairman that this case is comparable to the situation described in his letter to you, is that correct?

Mr. KINTNER. No; I don't think we said that.

Mr. LISHMAN. I will quote it to you.

Mr. KINTNER. I don't think we said it in quite those words. The letter speaks for itself.

Mr. LISHMAN. I will quote from the letter and referring to that case:

This case is comparable to the situation described in your letter inasmuch as the Commission's complaint was directed at the means whereby the public's attention was directed to testimonials or advertisements and an undisclosed situation existing in connection therewith, rather than the truth or falsity of the testimonials or advertisements themselves.

Am I quoting directly?

Mr. KINTNER. Which page is that of the letter, Mr. Lishman?

Mr. LISHMAN. Page 3.

Mr. KINTNER. Starting on page 2, we say that the case of *Northam Warren* involved a Commission proceeding, and so forth. This case is comparable; yes. That is correct. I find the language.

Mr. LISHMAN. In that letter, you go on to state that the court of appeals held that inasmuch as there was no misrepresentations as to the products involved, the Commission was without jurisdiction; is that correct?

Mr. KINTNER. That is right.

Mr. LISHMAN. Now you have acknowledged in your letter that the situation involved in the *Northam Warren* case is comparable to that involved in the TV quiz show probe.

Mr. KINTNER. It is in principle, but not closely parallel.

Mr. LISHMAN. But then you tell the committee—

Mr. KINTNER. This is the way we lawyers have of reasoning a situation.

Mr. LISHMAN. Yes.

Then you tell the committee that the court of appeals overruling the Commission in that case is still the law on the subject today; is that correct?

Mr. KINTNER. I believe it is, particularly in view of these two later cases in the fifties:

The *Koch* case and the *Scientific Manufacturing* case.

Mr. LISHMAN. That case we are referring to, the *Warren* case, was decided in 1932?

Mr. KINTNER. That is right.

We, of course, challenge the truthfulness of testimonials in cases.

Mr. LISHMAN. Is it a fact that on September 3, 1940, the Federal Trade Commission published a rule, rule 7, concerning deceptive testimonials, which is still on the books today? These are trade practice rules. I will quote from part of rule 7:

It is an unfair trade practice for any member of the industry to use any testimonial or purported testimonial or representation with respect thereto which is false, misleading or deceptive, or to cause any testimonial or part thereof to be used in such manner as to have the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers in the belief:

(a) that the testimonial was given without solicitation or payment therefor when such is not the fact.

Now I am going to ask you this question:

In view of the fact that you promulgated that rule on September 3, 1940, 8 years after the case we cited and 2 years after the Wheeler-Lee amendment, doesn't that rule clearly indicate that the Commission considers the type of practice in the *Northam Warren* case to be illegal under section 5?

Mr. KINTNER. No, sir.

I think that rule probably reflects correctly the state of the law today. It says if you are going to make a statement about a testimonial, you better be sure what you say about the testimonial and what the testimonial says is correct.

If you remain silent, then you have the protection of that old case. You don't have to make an affirmative disclosure that I bought this testimonial and here it is.

I suppose one could plausibly argue that is not right. We took that position and the courts said you have gone too far.

Mr. LISHMAN. The rule says, however, that it is deceptive if the testimonial was given without solicitation or payment therefor and an announcement is not made of that fact.

Mr. KINTNER. If the public reads in the testimonial, or if there is anything in the testimonial which implies that it is given voluntarily and without pay. They are very careful about that. They give the testimonial, but they are very careful not to say very much about it, under which it was obtained.

Mr. LISHMAN. Mr. Kintner, does the FTC have jurisdiction over producers and sellers of the TV shows in interstate commerce?

Mr. KINTNER. I think we might have jurisdiction if they advertised a product. I don't know, frankly. This is a tough one. I think we would have to have the factual situation before that could be answered. The sale might not be in commerce. Actually, you are probably getting into the questions raised in the *Hammell* case.

This is one I want to look at very carefully to find out on what we based jurisdiction. I will submit a statement to the record on that and I think it will probably answer your last question.

(Statement appears on p. 565.)

Mr. LISHMAN. In the *Keppel* case, the main thing you were proceeding against there was the immoral business of the lottery and it was not a pretended contest of skill or knowledge.

Mr. KINTNER. It related to the actual sale of a product in that instance.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Are there any further questions by members of the committee.

Mr. MACK. Mr. Chairman, I had just one question.

Mr. Kintner, you alluded to the medicine shows some 150 years ago and said that some deception was employed at that time. Since that time, of course, in 150 years we have enacted very important legislation to regulate the sales in commerce, advertising, et cetera.

We enacted the Sherman Act and the Clayton Act and the one you are interested in, the Federal Trade Commission Act.

Mr. KINTNER. That is correct.

The CHAIRMAN. Now we have a different situation existing. Certainly these laws were enacted to control some of the deceptive advertising in this period. Of course, the Federal Trade Commission Act, section 5, which has been repeated many times today, it would seem would certainly apply in this particular area, this portion you quoted in your letter to Mr. Harris, regarding deceptive acts or practices in commerce.

For that reason it would appear to me that the Federal Trade Commission would have jurisdiction in areas that the Federal Government would have jurisdiction to regulate—these deceptive practices that it didn't have many years ago.

I wanted to ask this question.

If there were an advertiser encouraging people to buy his product, say some type of cereal for kiddies, and they required them to purchase the product and take two or three box tops to send in to enter some contest, then if it was determined that contest were phony, don't you think the Federal Trade Commission would have an interest in that matter?

Mr. KINTNER. That gets closer to the lottery type situation where there is actual deception in the sale of the product. What you have here in these TV situations is deception which is indirect.

The CHAIRMAN. If you will excuse me for interrupting at this point, I brought that up because I believe it is very closely related to the problem confronting us today.

In my opinion, without any hesitation or question you certainly should have jurisdiction in such an instance. If you do, I think also it would follow you would have jurisdiction in this problem that we are dealing with.

Mr. KINTNER. We can move from example to example until we could reason, I think, you get closer and closer to a situation and then you reason that the bridge is made.

I concede that our jurisdiction is so broad that one can argue quite plausibly this matter of jurisdiction. I merely pointed out that the courts have taken a more restrictive view, and I suppose perhaps, than Congress intended in setting this up in exercising a check on us; in other words, that we not be given too broad a hunting license.

The CHAIRMAN. I have just one other question.

You stated that you were interested in misrepresentation in the product itself.

In many of the TV ads, it certainly appears, or one would be inclined to think, that there is misrepresentation of the competing product without identifying the product. That would have reference to the performance of the product.

Mr. KINTNER. You have reference to what we call disparagement of a competitor's product.

There is a body of law on that. They are hard cases to make because the clever advertiser usually manages to disparage without getting too close to the line. You have to nail him just at that point where he really is disparaging his competitor's product.

The CHAIRMAN. I think you have the problem as well in some cases of deceptive advertising.

Mr. KINTNER. Yes.

The CHAIRMAN. On radio and TV.

I would like you to tell the committee what action you have taken in regard to the misrepresentation of the competing product.

Mr. KINTNER. This morning I detailed a number of cases that we have made in this field of false and deceptive advertising, even using the TV picture.

I mentioned the *Lestoil* case where we issued an order involving depiction of Lestoil near stoves and near a child's Bunsen burner. We found that Lestoil was combustible and there should be affirmative disclosure. We put the pictures or took the pictures from the TV set and attached them to our complaint.

We have had other TV advertising that I detailed to the committee this morning. There are cases in the mill, some cases that are near issuance, which involve some current TV advertising.

In other words, deception is being used in advertising a product.

Mr. MACK. You have issued some cease and desist orders in these cases?

Mr. KINTNER. Yes.

We have this television and radio unit which does monitoring of the programs. It takes pictures of the programs where there is any question, and we use them in evidence before our hearing examiners.

Mr. MACK. Thank you very much, Mr. Chairman.

The CHAIRMAN. Mr. Flynt.

Mr. FLYNT. Mr. Kintner, it might be well to close this particular hearing at this time with a reading once again of section 5(a)(1) of the Federal Trade Commission Act, which reads:

Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.

That is the end of the subsection.

From that do you not, with your experience as both General Counsel and now as Chairman of the Commission, conclude that a deceptive act or practice is just as much a violation of the law as an unfair method of competition?

Mr. KINTNER. Section 12, I think, is applicable here.

The Wheeler-Lee amendment which further spelled out the unfair method of competition, deceptive acts and practices in commerce, reference to false and misleading advertising; that is the skeleton. The outlines are the cases brought by the Commission and the many, many cases in the books passed upon by the courts. That body of case law fills out the skeleton and makes the body of law.

Mr. FLYNT. I certainly hope, and I believe that you will furnish us with some affirmative suggestions as to how Congress can legislate in TV next session, to correct these practices which by your own expressed opinion, by the expressed opinion of the chairman of the Federal Communications Commission, and I believe without exception, any witness who has appeared before this committee, are deceptive, fraudulent, immoral, and dishonest.

I certainly hope that through you, as the Chairman the Federal Trade Commission will come up with some affirmative suggestions so that together we may achieve the objective which, I think, we all have in mind.

Mr. KINTNER. We tender our assistance as we always have to this committee. We are as anxious to do our job properly as you are to do your job here.

This legislation definitely is the Congress' business. You are entitled to your cooperation and help, and I do tender it now as I have in the past.

The CHAIRMAN. Mr. Kintner, may I on behalf of the committee extend the thanks to you and the members of your staff for your appearance here today. You may feel that some of these discussions have been rather drawn out and lengthy, but the purpose of this is to try to develop what the present situation is in this particular field, and our legislative responsibility, if any, in connection with it.

Consequently, these questions and answers and the discussion seem to me to go to the crux of this entire matter, as to what legislative consideration should be given, and which we should recommend to the Congress.

Mr. KINTNER. Mr. Chairman, it is our job to assist you in that very important undertaking. I thank you for your courtesy, which is always a pleasure.

The CHAIRMAN. Thank you for making yourself available and for the thorough discussion of the subject. We do appreciate your willingness to be helpful to the committee as it continues to consider this highly important problem.

Mr. KINTNER. Thank you, sir.

The CHAIRMAN. To you and and to each one of you, we extend our thanks.

Mr. KINTNER. Ours has been a long and noble connection with this committee, going back I guess 45 years.

The CHAIRMAN. Yes, to 1914, as a matter of fact.

Mr. KINTNER. We find a very high degree of understanding and expertness in the members of this committee of the House.

Thank you, sir.

The CHAIRMAN. Thank you very much. You may be excused, if you desire.

At this time there are a number of insertions for the record, which is material, which will be helpful and which has been used in connection with the investigation and the hearings.

Without objection, it will be included at this point in the record.

(District Attorney Hogan's Memorandum of Law submitted to Judge Schweitzer, July 13, 1959, follows:)

MEMORANDUM OF LAW SUBMITTED JULY 13, 1959, BY HON. FRANK S. HOGAN, DISTRICT ATTORNEY, COUNTY OF NEW YORK, TO COURT OF GENERAL SESSIONS, COUNTY OF NEW YORK

In the Matter of the Report of the Third September 1958 Grand Jury Relating to the Investigation of Television Quiz Programs.

INTRODUCTION

On June 10, 1959, the Third September 1958 Grand Jury, inpaneled by this Court (*Schweitzer, J.*) on September 17, 1958, handed up a presentment which was the product of almost nine months of investigation into certain aspects of television quiz programs. The presentment deals with possible fraud, and the extent thereof, committed by quiz show producers in preparing successful contestants by giving preliminary questions and answers, thus converting what were represented as honest contests of skill into manipulated programs.

The following procedure is invariably practiced in this state with respect to presentments: the court receives and discloses the contents of the filed report; any individual deeming himself adversely affected by the presentment, and desiring to have it quashed, then moves for expungement; finally, the court, having considered argument on the subject, renders its ruling.

Contrary to that uniform practice, the Court sealed this presentment and refused to disclose its contents. Pursuing a unique procedure, it has indicated a determination to rule upon the issue of whether the report should be publicized or secreted without the benefit of a motion to expunge by any persons who might or might not have made such a motion had they been able to read it. The District Attorney's Office, acting as counsel to the grand jury, has been permitted to file this memorandum in support of disclosure.

Since, presumably, only the Court, the District Attorney and the grand jury know the contents of this presentment, and in view of the aura of secrecy imposed upon it, we find ourselves in an extraordinary position, for reasons appearing immediately below.

Undoubtedly, neither the Court nor anyone else concerned with this proceeding, if it can be termed such, will take the legal position that *no* presentments are valid or proper, and certainly no one will maintain that every presentment is proper. In short, some are and some are not; and the determination of whether this one is or is not can only be made by examining and discussing its contents in the light of the applicable standards of law and logic.

We are thus confronted with an edict of secrecy on the one hand and, on the other, with the legal necessity of discussing this presentment on a factual basis. In this dilemma, we must make a certain factual assumption for purposes of argument.

The assumption upon which we proceed is that the report discloses a gigantic fraud and hoax on the part of television quiz shows, involving a regular practice of informing "contestants" whose lengthy presence on a program is deemed

profitable, of the questions to be asked, and, frequently, of providing the correct answers as well.

It is also necessary for purposes of this memorandum to state two actualities of an innocuous nature. One is that the presentment does not name or mention any individual, program, agency, company or other entity connected with the quiz show industry. The other is that it recommends that copies of the report be sent to certain official agencies, the functions of which are relevant to the conditions discovered.

With this factual basis, we first treat the legal principles applicable to presentments in general, and then discuss the report in question in the light of those principles.

POINT I. THE PRESENTMENT IS A PROPER AND VALID ONE

A. THE LEGAL PRINCIPLES INVOLVED

This area of law, as will appear, is in a rather nebulous state, uncontrolled by statute or by appellate authority. Analysis of the subject in the light of the history of presentments at common law and in New York, however, discloses a certain pattern of commonsense.

Inherent in the background, history and entire concept of the grand jury is its power to render "reports" or "presentments" which do not lodge formal criminal charges but call attention to harmful or unsavory conditions affecting the public interest. This power, of common law origin and dating back to the thirteenth century in England, was invariably regarded as of a broad nature, authorizing grand jury observation, comment and recommendation upon a wide variety of subjects of public concern. (*Holdsworth's History of English Law* (1922) Vol. I, pp. 321-323; *Matter of Quinn* (Gen. Sess. N.Y. Co. 1957) 5 Misc. (2d) 466, 468-469; *In re Presentment by Camden County Grand Jury* (1952) 10 N.J. 23, 89 Atl. 2d) 416, 443).

The grand jury "presentment" followed the English common law across the ocean in colonial times; in short, it was, as characterized by New Jersey's highest court, a "practice imported here from England three centuries ago as part of the common law" (*In re Presentment by Camden County Grand Jury, supra*, 10 N.J. 23, 89 Atl. (2d) 416, 443). As in New Jersey and in numerous other states, the grand jury "presentment" was a part of the law of New York both before and after the adoption of a state Constitution. New York's original Constitution of 1777 perpetuated the then current law until it might be legislatively overridden, and no statutory repeal or modification with respect to presentments has ever been enacted. (*Matter of Quinn, supra*, 5 Misc. (2d) 466, 468-469; see Code Crim. Proc., § 250).

Prior to the New York Constitution, grand juries were not at all reluctant to use their common law presentment power for divers purposes. As recently asserted by a member of this Court (*Matter of Quinn, supra*, 5 Misc. (2d) 466, 469):

"A review of the cases applicable thereto makes it crystal clear that the Grand Jury had and exercised the power to inquire and report with respect to matters of public interest and concern, including misconduct in office, prior to the adoption of the State Constitution in 1777." [*Italic ours.*]

The advent of the Constitution hardly imposed any limitation upon grand jury presentment activity with regard to either number or scope. In New York County alone, according to the records of this Court, no fewer than 497 presentments have been filed by our grand juries since 1869. Unlike the present situation, in every solitary instance the report was received and disclosed by the Court.

Although the majority of these presentments involved matters concerning public agencies or officials, by no means were they all confined to that area. A vast number dealt with unsalutary conditions in nonofficial fields, savoring of fraud, racketeering and crime. Thus our grand juries have filed critical reports concerning, for example, the activities of professional bail bondsmen, fraudulent matrimonial actions, the fish market racket, the evils of professional boxing, automobile accidents, automobile thefts, fraudulent automobile accident claims, bucketshops, false advertisement of stocks, fraudulent public auctions, criminal conspiracy by ice dealers, traffic in stolen coal, black market activity in Salk polio vaccine, pushcart nuisances, the prevalence of the policy game, gambling, sensual dancing in hotels and restaurants, carbon monoxide deaths, murder cases, and the increase of crime.

These and the others among the great number of presentments filed by grand juries of this county down through the years have been accepted by a host of

judges of the Court of General Sessions, who, presumably have recognized the validity of presentments generally and the propriety of the specific reports submitted to them. In so receiving and publicizing those presentments, they undoubtedly felt that they were merely following an accepted practice emanating from an accepted and deep-rooted legal institution, and they saw no reason to justify their actions in written opinions.

In this connection, it is pertinent to note certain judicial opinions in this state which opponents of presentments, or of any particular presentment, like to characterize as a body of "law" or "authority" on the subject. This approach is highly misleading, for not only is there no statutory or substantial appellate court "law" in this field, but the so-called lower court "authority" to be found is necessarily drawn from one segment of the judiciary, namely, the conservative extreme.

It seems apparent, as indicated, that many judges who have, without opinion, accepted and publicized unchallenged presentments, entertain liberal views concerning their legality, propriety and usefulness. The same may be said of judges who, on occasion, have rejected challenges to such reports and denied motions to expunge without expressing their views by way of formal opinion. In a very small minority of instances where presentments have been filed, motions to expunge have been made and granted; and in those cases, the judges have ordinarily deemed it advisable to explain their actions in writing. Such opinions, of course, necessarily seek to justify the expungement rulings upon theories ranging from asserted illegality of all presentments to asserted limitations of varying degree. Their general tenor is that in spite of whatever public service may be performed by disclosure of the particular report, expungement is equitable because of probable injury to designated individuals who have no opportunity to contest the accuracy of the criticism. (See *Matter of Halleran* (Co. Ct. Queens Co. 1941) 176 Misc. 943; *Matter of Healy* (Co. Ct. Queens Co. 1937) 161 Misc. 582; *People v McCabe* (Sup. Ct. Queens Co. 1933) 148 Misc. 330; *Matter of Osborne* (Sup. Ct. N.Y. Co. 1910) 68 Misc. 597; *In re Heffernan* (Co. Ct. Kings Co. 1909) 125 N.Y. Supp. 737; *Matter of Gardiner* (Gen. Sess. N.Y. Co. 1900) 31 Misc. 364; *Application of United Electrical, Radio & Machine Workers of America* (U.S.D.C.S.D.N.Y. 1953) 111 Fed. Supp. 858). Since there is no right of appeal from these rulings or orders (*Matter of Jones* (1905) 181 N.Y. 389, 391-392), these cases stand merely as a group of lower court decisions and opinions expressing the conservative view with respect to presentments. In brief, this body of so-called "law" can hardly be deemed representatives of the judicial thinking in this state nor can it be stamped with the label of "authority."

The only New York appellate decision is a rather early Second Department case where a County Court's order denying a motion to quash a presentment somehow found its way into the Appellate Division when, apparently, no one raised the point that the order was not appealable. (*Matter of Jones v. People* (2d Dept. 1905), 101 App. Div. 55, app. dism'd 181 N.Y. 389.) Refusing to disturb or expunge the report, the Appellate Division affirmed the order below. In so doing, it confirmed the common law principle that a presentment is not improper simply because it is not followed by indictment or formal charges against the person or persons criticized (101 App. Div., at p. 57). The Court further stressed that this is especially evident with respect to those presentments involving public officials. In that connection it pointed to present Section 253 of the Code of Criminal Procedure (then § 260), authorizing the grand jury to "inquire" into three specific phases of public life and institutions: (1) the case of every person imprisoned but not yet indicted on a criminal charge; (2) the misconduct of public officials; and (3) the conditions of public prisons. Since such inquiries do not necessarily result in criminal charges for irregularities discovered, the Court declared, reports or presentments would appear essential to effectuate those functions of the grand jury (pp. 56-57).

Possibly owing to misconception of the *Jones* decision and opinion, possibly because of undue attention to a dissenting opinion therein (pp. 59-64), and possibly because of a desire to justify the expunging of presentments before them, some conservative or "anti-presentment" lower court judges have construed the *Jones* case as holding that no presentment can be valid unless it deals with a public official or agency, or with one of the other two fields of inquiry mentioned in Section 253 of the Code. (See, e.g. *Matter of Halleran*, *supra*, 176 Misc. 943, 945; *Matter of Healy*, *supra*, 161 Misc. 582, 595.) In truth, however, that is not the holding of the *Jones* case, nor is any such assumption warranted by authority or by logic.

In the first place, the enactment of Section 253, delineating three grand jury areas of investigation, was not directed towards presentments at all, nor was it in any way intended to circumscribe the scope or the powers of the grand jury in issuing presentments. Such authority is derived from the common law and, existing in broad fashion long before the passage of section 253, it remains totally unaffected by that (here irrelevant) legislation.

Beyond that, moreover, an arbitrary limitation narrowing the scope of presentments to the fields of prisons, public agencies and public officials would appear highly illogical. The basic reasons for presentments are, of course, their benefit to the community, and the public interest which they serve. In some instances, a grand jury report concerning irregularities in a governmental department may be of greater public concern than a report dealing with unsavory conditions in a particular nongovernmental area, but certainly no general rule to that effect can be predicated. A presentment dealing with the inefficiency of a village dogcatcher could hardly be deemed of greater public significance than one exposing fraudulent labor union practices resulting in unemployment of thousands of people. To accept and publicize the former as a boon to the community because of the dogcatcher's official status, and to reject or expunge the latter because labor unions are not governmental agencies, obviously would be the acme of absurdity. Such action would become even more ludicrous, if possible, in the light of further facts that the "dogcatcher" presentment criticized a specific person while the labor union report mentioned no individual but spoke in terms of conditions and practices.

It is manifest, therefore, that no sound analysis of the subject could produce the suggested restriction; and it is pertinent to observe that a recent opinion of this Court speaks of a proper presentment as one dealing with "matters of public interest and concern, including misconduct in office" (*Matter of Quinn, supra*, 5 Misc. (2d) 466, 469).

Perhaps the most persuasive authority concerning the proper scope of presentments is to be found in New Jersey, where orders of expungement or refusal to expunge are appealable and have, on occasion, reached that State's highest Court. (See *In re Monmouth County Grand Jury* (1957) 24 N.J. 318, 131 Atl. (2d) 751; *In re Presentment by Camden County Grand Jury, supra*, 89 Atl. (2d) 416.)

Especially significant is the *Monmouth County* case, *supra*, where one of two grand jury presentments which a judge refused to file and disclose criticized widespread retailing of pornographic publications in the county. Although that document had no relation to public officials or official misconduct, the Supreme Court of New Jersey reversed the order of rejection and secrecy on the ground that it had performed a disservice to the community by concealing constructive endeavors of the grand jury in matters greatly affecting the public interest. In the course of its opinion, the high Court wrote (131 Atl. (2d), at p. 755):

"A grand jury, of course, cannot forage at will upon any whim it may entertain. Its expression must be limited to matters imminent and pertinent, relating to the public welfare and of ultimate benefit to the community served by the grand jury. The presentments in question, however, spoke of common problems prevailing to an extent demanding added official attention, and the grand jury undoubtedly hoped further study and consideration of them would redound to the public good.

"To impugn such laudatory efforts by a conscientious and constructive grand jury and to destroy by suppression the value of its labors is not only unfair but would have a tendency to deter subsequent panels from similar endeavors, although there might be great need for the moral stimulant of a grand jury directive.

* * * * *

"The discretionary judicial right of suppression should be sparingly exercised and exerted only where the matters returned are clearly and unquestionably contrary to the public good."

Finally, it should be observed that those judges who, rightly or wrongly, have suppressed or expunged presentments, have invariably rested their decisions on the ground that the contents would be injurious to *specific individuals*. Indeed, examination of the "expungement" decisions demonstrates that even the most conservative element of the judiciary regards *individual* malignment—as distinguished from vaguer criticism of corporate entities, fields of industry, governmental departments and the like—as the basic and virtually essential factor underlying any ruling of expungement. (See, e.g., *Matter of Halleran*,

supra, 161 Misc. 943, 945; *Matter of Healy, supra*, 161 Misc. 582, 597-599; *Matter of Osborne, supra*, 68 Misc. 597, 604-606; *Matter of Gardiner, supra*, 31 Misc. 364, 367; *Application of United Electrical, Radio & Machine Workers of America, supra*, 111 Fed. Supp. 858, 867-869; *In re Presentment by Camden County Grand Jury, supra*, 10 N.J. 23, 89 Atl. (2d) 416, 444.) While even unfavorable comments concerning individuals is not alone a sound reason for expungement (*In re Presentment by Camden County Grand Jury, supra*, 10 N.J. 23, 89 Atl. (2d) 416, 444), it is well to bear the above consideration in mind for purposes of gauging the present case.

Although the "authorities" in this field do not present any immutable standards, or even any clear-cut controls, from the foregoing, the general approach to evaluation of the propriety of any particular presentment is crystal clear. In essence, there are two prime factors to be considered and balanced. The first, of course, is the public interest to be served by the report; and the second is the possibility or extent of injury to persons mentioned in it, or perhaps indirectly affected by it. A presentment of negligible value to the community, but which is sharply and injuriously derogatory to specified individuals, obviously should be quashed. At the other extreme is one containing matters of great public importance and concern, which, without mentioning individuals, directs its criticism more generally to official agencies, to commercial entities of one sort or another, or to conditions in a designated field. No sound reason, it is patent, could be advanced for expungement or concealment in the latter case.

Thus, while the determination in most instances may not be as simple as in the above-cited extremes, in every case it boils down to a weighing and balancing of these two considerations. Such is the only realistic, common sense and equitable approach, and it is by these criteria that we discuss the presentment at hand.

B. THE INSTANT PRESENTMENT

1. Concerning public interest and importance to the community

The public interest in this presentment and the purpose to be served by it cannot be fully appreciated without reference to certain background facts as well as to facts necessarily assumed for purposes of this memorandum.

For several years, up through 1958, the most popular form of television entertainment was the so-called quiz show, in which many contestants won large, and sometimes huge, sums of money or valuable property by answering frequently difficult questions requiring unusual knowledge in various fields. This type of show quickly mushroomed until a number of such programs became regular standbys. While accurate statistics are not available, a conservative estimate doubtless would place the total viewing public throughout the nation at over fifty million.

Probably the greatest attractions of these programs were the "geniuses" with fantastic funds of information who appeared successfully week after week, accumulated fortunes and holding the national audiences spellbound by their wizardry. Of all ages, ranging from children to octogenarians, coming from all walks of life and frequently displaying amazing knowledge of subjects quite foreign to their callings, many of these successful contestants became national heroes. Their weekly appearances were eagerly awaited by millions who agonized with them as they ostentatiously struggled with difficult questions, who vicariously shared in their triumphs, and who suffered, too, in their eventual defeats and exits from the programs. The immense popularity of these quiz shows, of course, rendered their gold mines of the air, exceedingly profitable to their fortunate sponsors.

In August of 1958, certain information casting doubt upon the superhuman qualities of some of the "genius" contestants, and upon the integrity of the general quiz show structure, was received by the District Attorney's Office of New York County and by the press. The newspapers publicized their information, thus shocking millions of the quiz show addicts into varying states of confusion. From the prolific public and private comment to be heard, it appeared that some people immediately believed the worst, some were skeptical, some were uncertain of the extent of the fraud, if any, others were hopeful that it was all baseless rumor, and still others simply refused to believe that their heroes and heroines, whom they had faithfully watched through so many long vigils, were artificially creations designed to keep the audience glued to channels advertising certain products.

On September 17, 1958, at the instance of the District Attorney's Office, an additional grand jury was impaneled, in the middle of the court term, by the Court of General Sessions (*Schweitzer, J.*) for the sole and exclusive purpose of investigating the television quiz show situation. In charging the grand jury concerning their duties, Judge Schweitzer declared that the investigation would "take a substantial amount of grand jury time" (Mins. Ct. of Gen. Sess., Pt. 1, Sept. 17, 1958, p. 4), and his prediction was correct, albeit something of an understatement. During no fewer than fifty-nine sessions, over a period of almost nine months, the grand jury heard testimony from more than two hundred witnesses dealing with numerous phases of television quiz shows.

As both the District Attorney and the Court realized proof of the giving of questions and answers to contestants beforehand, though constituting a "fraud" in a lay sense, might not in itself establish a crime under the New York Penal Law. However, as a result of the charges and countercharges, it was unquestionably the duty of the grand jury to examine into the jungle of misrepresentation in which the quiz programs flourished, in order to determine whether the crimes of larceny, commercial bribery or extortion had been committed.

Insofar as formal criminal charges were concerned, the grand jury found an indictment for perjury based upon a witness' assertion that he had never advised contestants in advance of the questions to be asked them or of the correct answers thereto.

With the entire quiz show picture before them, the grand jury felt a duty to extend their endeavors beyond this indictment. Exercised by the information acquired, and conscious of the immense public interest in this subject, they were determined to publicize their overall findings, not merely for the purpose of satisfying the national curiosity, but in the hope that this would lead to correction of what they deemed a large-scale evil. To that end, they handed up the instant presentment, concluding with a recommendation that copies thereof be forwarded to certain specified agencies which are in a position to assist in rectifying the condition.

As we have stated above, we must necessarily here assume for the purposes of argument that this presentment exposes a national fraud whereby television quiz shows have been constantly misrepresented to millions of citizens as honest tests of the contestants' knowledge and skill. Under that premise, it is beyond cavil that disclosure would greatly serve the public interest.

On this score, one must begin by estimating the public reaction—a task which is not difficult. It is hardly disputable that millions of viewers would feel shamefully cheated by a hoax which stole many hours of their time. Nor could the justice of their position and the basic immorality involved be sloughed off by protestations that the only deprivation was that of the viewing public's leisure "time," and that, in any event, the public received "entertainment" even though its character was misrepresented.

It should be remembered that television quiz shows are not comparable to professional wrestling, which makes little or no pretense of being legitimate and which, in New York at least, has been officially stamped an "exhibition" as distinguished from a "match" or "contest." The very essence of the quiz program's appeal lies in its implied representation of honesty. Were it generally understood that these programs do not present honest tests of the contestants' knowledge and intellectual skills, they would be utterly ineffectual in acquiring the public's "time."

While time may not be the equivalent of money to the viewer, it certainly is to the producer and sponsor. Literally, Television sells entertainment in consideration of "time." The "time" which viewers spend watching a program and its commercials, is the consideration received for the entertainment, and that consideration constitutes "money" on a large scale. From Television's subjective standpoint, therefore, misrepresentation of the entertainment offered is morally if not legally, larceny by false pretenses, and constitutes a fraud emanating from the most venal of motives.

It is perfectly apparent that this presentment, publicized, would produce a reaction of a highly salutary nature. Apart from the indisputable fact that the public has a right to know the extent to which it has been duped and cheated, and apart from the right of Television itself to know facts enabling it to clean its own house, there can be little doubt that the national resentment would lead to legislation and regulation designed to prevent a recurrence or continuation of such fraud. In this connection, it is pertinent to recall the grand jury's recommendation that copies of this presentment be transmitted to official agencies capable of acting in that direction.

An apt illustration of the public service which can be performed by such a presentment is provided by a report of a 1947 grand jury of this County (accepted and publicized by *Valente, J.*), dealing with an investigation into professional boxing. That presentment—not directed against any public official or agency, it may be noted—resulted in the legislation underlying two current New York County indictments involving evils in the field of professional boxing.

In summary, from every viewpoint it would be difficult to envision a presentment more in the public interest than the one at bar.

2. Concerning the possibility of injury

As previously noted, those judges generally frowning upon presentments and inclined towards expungement predicate their rulings, in the main, upon the ground that it is unfair to criticize a specific individual or individuals. Even in the pattern of the conservative or expungement group of decisions, it is this factor which is presented as determinative.

Thus, for example, a federal judge (*Weinfeld, J.*), in expunging a presentment, wrote that, in so doing, he was not "concerned with reports of a general nature touching on conditions in the community", which "may serve a valuable function and may not be amendable to challenge" (*Application of United Electrical Radio & Machine Workers of America, supra*, 111 Fed. Supp. 858, 869). In this connection, he further declared (*id.*, pp. 867-868):

"While the State courts have, for the most part, countenanced general reports which do not single out individuals, they have uniformly condemned specific censure by the Grand Jury."

The presentment under discussion does not "single out" or make the slightest mention of any "individuals." As a matter of fact, it does not mention a single corporation, agency, quiz program, or entity of any sort whatever. The closest that it ever comes to specificity is with the broad assertion that the grand jury has "examined the practices of six of the most popular television quiz programs."

Necessarily, any fears of injured reputations as a result of this presentment entertained by the Court must stem from the following line of reasoning: (1) owing to prior newspaper publicity, the identities of at least some of the quiz programs involved must be known to the public; (2) if this be so, the identities of some of the production agencies could be learned; and (3) if that be so, the names of individuals might be surmised.

This line of argument is remote and unreal when it is used to suggest that this presentment should be stricken down for "specific censure" of designated individuals. Prior publicity and speculation cannot and do not change the non-specific character of this presentment.

The fact is that this presentment does not confirm or dispel conjectures concerning the identities of persons or agencies involved. It does confirm a general belief about an existing condition in the industry, but that in itself cannot aid in identifying individuals responsible for the conditions. Moreover, the mere fact that the investigation was accompanied by public speculation should not motivate this Court to suppress a report of substantial public importance. To do so would clearly exceed the limits of proper judicial concern.

C. CONCLUSION

It is difficult to conceive of a presentment more demanding of disclosure than this one. Its value and importance to the public are of the utmost. The possibility of injury to individuals is minimal. The members of the grand jury have labored long and diligently in the belief that they were performing a public service. A substantial portion of the American population is eager to know their findings, and has a right to that information.

There are no immutable or authoritative legal standards precluding disclosure of this report. In view of the circumstances herein, any attempt to justify concealment on that ground could only appear strained and hollow. The circumstantial, logical and policy arguments against such concealment are overwhelming. So clear is this that it is to be wondered how any judge could take that suppression upon himself on the basis of esoteric, albeit solicitous, fears that the reputations of some commercial agencies or some no longer existent television programs might inferentially be sullied.

More eloquently persuasive than any argumentation that can be made in a memorandum of law, is a touching letter recently received by the Grand Jury Association of New York County from one of the most successful contestants to appear on the quiz shows. Presumably, one who has miraculously attained dis-

tion and fortune through a hoax, and seemingly has everything to lose by disclosure, would be the strongest proponent of suppression. Yet, this beneficiary, prompted by "the controversy which has resulted from the impounding of the presentment," wrote of his inability to live with "the personal feelings of shame which confront me daily," and to "ignore the insidious effect on the legal structure by those who violate decency, then are protected by the same structure." Overcome by conscience, he offered publicly to sacrifice his most prized possession, his good name, "in the hope that it will in some small way help to prevent the concealment of the truth when that concealment does other than serve decency and justice."

Respectfully submitted,

FRANK S. HOGAN,
District Attorney, County of New York.
 RICHARD G. DENZER,
 JOSEPH STONE,
Assistant District Attorneys of Counsel.

(Chairman Harris' affidavit on motion for an inspection of grand jury minutes, July 30, 1959, follows:)

COURT OF GENERAL SESSIONS, NEW YORK COUNTY

DOCKET NO.—

In the Matter of the Report of the Third September 1958 Grand Jury Relating to the Investigation of Television Quiz Programs

CITY OF WASHINGTON,
District of Columbia, ss:

AFFIDAVIT ON MOTION FOR AN INSPECTION OF GRAND JURY MINUTES

Oren Harris, being duly sworn, deposes and says:

1. I am a member of Congress, 86th Session, and Chairman of the Committee on Interstate and Foreign Commerce of the House of Representatives of the United States of America, and of its duly constituted Special Subcommittee on Legislative Oversight, and pursuant to the authorization of such subcommittee, make this affidavit in support of a motion whereby the subcommittee may obtain access to the minutes of the Third September 1958 Grand Jury in order to assist it in carrying out its statutory and constitutional responsibilities of legislative oversight. The Third September 1958 Grand Jury, impaneled by this court on September 17, 1958, has handed up a presentment resulting from several months of investigation into the television quiz programs. The presentment has been sealed and has, as yet, not been made public.

2. As appears more fully below, this subcommittee is duly authorized to investigate into: the workings of administrative agencies subject to the jurisdiction of the parent committee; the adequacy of the statutory provisions creating and governing such agencies, and the adequacy of the enforcement of such statutes; and to report and recommend to the Congress concerning legislative or administrative measures which are needed in the public interest.

3. The adequacy in the public interest of the statutes now being administered by the aforesaid commissions and of the enforcement of the same as they relate to television quiz shows is now the object of study by the subcommittee.

4. As appears more fully below, the present motion is made in order to aid in the enforcement of existing law by federal agencies and to ascertain in the public interest if there are defects in existing law or its administration which require corrective legislation. It is not made in any way for the purpose of serving a private interest or to aid a private litigant.

5. The Special Subcommittee on Legislative Oversight was appointed under the authority of section 136 of the Legislative Reorganization Act of 1946, 60 Stat. 812; H. Res. 7, 86th Congress; H. Res. 56, 86th Congress, agreed to on January 28, 1959. Under H. Res. 56, *supra*, the Committee on Interstate and Foreign Commerce of the House of Representatives, of which this committee is a duly constituted subcommittee, was given authority to investigate, *inter alia*, "Advertising, fair competition and labeling," as well as "[t]he administration and enforcement by departments and agencies of the government of provisions

of law relating to subjects which are within the jurisdiction of such committee," H. Res. 56, 86th Congress.

6. The Rules of Procedure of the Special Subcommittee on Legislative Oversight were issued pursuant to the House resolutions cited *supra*, and Rule XI, Rules of the House of Representatives, 86th Congress (H. Doc. No. 458, 85th Congress). Section 1 of those rules provides:

"1. The subcommittee shall conduct investigations pertaining to the workings of the independent regulatory commissions and agencies which are subject to the jurisdiction of the parent committee (the House Committee on Interstate and Foreign Commerce) and pertaining to the adequacy of existing commission and agency laws and regulations and their administration. The investigations are intended to assist the Subcommittee in making legislative or other recommendations to the Congress and to the administrative commissions and agencies, and to fulfill the duty of legislative oversight and supervision provided in the Legislative Reorganization Act of 1946."

7. One of our major tasks is to investigate the administration of existing law by the independent regulatory agencies in order to determine the adequacy of that administration. A second major task is to deal with problems of regulation which arise because of the inadequacy of existing Acts of Congress and recommend legislation, when necessary, to correct deficiencies.

8. The Federal Trade Commission and the Federal Communications Commission are among the independent regulatory agencies subject to our jurisdiction.

9. Our committee has received information with regard to the conduct of certain television quiz programs. These programs purported to award extremely large monetary prizes to those contestants possessed of the greatest ability and skill in answering very difficult questions on often recondite subjects. The information we have received provides a substantial basis for the suspicion that, in many cases, selected contestants on these shows were given answers to questions and "coached" prior to their appearance before the television cameras. Since the primary appeal of these programs rested on the popular belief that they constituted genuine tests of intelligence and ability, the information which has come to our attention, if true, would mean that a large segment of the American public has been fraudulently induced to watch these programs to the enormous profit of television producers and the sponsors of television programs.

10. Such suspended practices are within the jurisdiction of the independent regulatory agencies subject to our legislation jurisdiction. Section 5 of the Federal Trade Commission Act, 15 U.S.C. Section 45, provides that: "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful." The Commission has power to enforce this section through the issuance of cease and desist orders, and criminal prosecution for violation of such an order. If these television programs were conducted in the fraudulent manner outlined *supra*, they would constitute an "unfair method of competition," as well as a "deceptive practice." Of course the full ramifications of this practice, and hence the proper scope of a cease and desist order, will only become clear after full investigation. Also the proper parties to such an order can only be disclosed by complete investigation. The Federal Communications Commission also has jurisdiction over these programs. The Federal Communications Act, 48 Stat. 1091 (1934) 47 U.S.C. Section 326 (1946). See *National Broadcasting Co. v. United States*, 319 U.S. 190, 215-216.

11. The objects of our investigation of television quiz shows are as follows:

(a) To explore fully the conduct of these shows in order to provide an appropriate basis for enforcement action by the proper agencies.

(b) To discover why no action has been taken by those agencies vested with jurisdiction over the disclosed practices to prevent a recurrence of said practices and to inform the American public of the existence of the alleged fraud.

(c) To examine the existing regulatory scheme to determine whether it is adequate to deal with any fraudulent practices disclosed by our investigation. To recommend legislation to cure any defects in existing law.

(d) To explore all aspects of the alleged practices with a view towards strengthening existing enforcement mechanism so that a recurrence of any fraudulent practices may be effectively prevented.

12. Access to the minutes of the Third September 1958 Grand Jury would be of immense aid to us in carrying out the foregoing objectives, and provide us with information not readily obtainable elsewhere. Although we have made some preliminary investigation, it will be extremely difficult to conduct a

thorough inquiry. Several of the people involved in the production of television quiz shows have already testified before the Third September Grand Jury. Access to their testimony would serve several purposes:

(a) It would enable us to secure information as to the names of those participating in the production of these shows and the nature of their participation not readily obtainable elsewhere.

(b) It would provide us with a means of adequately judging the veracity and completeness of the information given to our investigators. Although we intend to call witnesses to a hearing of this committee, it is extraordinarily important to the conduct of our hearings that we be assured of complete and true information before a hearing is held. Without such assurance the possibility of harming the reputation and even the earning capacity of innocent people is always present. Access to the Grand Jury minutes would enable us to examine potential testimony before the hearing is held and screen out those who were relatively innocent of wrongdoing. Thus, with the help of the Grand Jury minutes, we will be able to perform effectively our proper investigative functions without harm to innocent parties. Without these minutes we often would have no choice but to call all those involved and determine their degree of complicity at a hearing. As is well known to the Court, we do not have the same ability to keep matters occurring at a hearing secret as does a Grand Jury.

(c) Access to the Grand Jury minutes would mean an immense saving in time and expense to the United States Government and help ensure a thorough and fair investigation.

13. We have no intention of publishing, in whole or in part, any of the Grand Jury minutes. If disclosed to our committee, they would be used as a basis for further investigation only.

14. The Courts of New York have frequently recognized that persons other than defendants may move for an inspection of Grand Jury minutes. See *In Re Attorney General of the United States*, 291 N.Y.S. 5. Nor have the Courts of New York drawn any distinction between motions by public officials of the United States and motions by state officials. *Ibid.* Minutes may be inspected whether the Grand Jury investigations resulted in an indictment or, as in this case, in a presentment. See *In Re People ex rel. Sawpit Gymnasium*, 60 N.Y.S. 2d 593; *In Re Attorney General of the United States*, 291 N.Y.S. 5.

15. The touchstone of decision in allowing inspection is whether the movant desires the information as a basis for effective law enforcement in the public interest. Inspection is designed to allow public officials to carry out the obligations of their office. All of the objectives of our subcommittee are in accordance with such a standard. Our investigation will strengthen the enforcement of existing law, result in legislation appropriate to protect the American public from fraud, and effectively deter any recurrence of such fraudulent practices. Thus our request for inspection is in accordance with the highest obligations of public office and is in direct response to our mandate from the United States Congress. In such situations it appears to be the unbroken practice of New York Courts to make available the minutes of Grand Jury testimony in order to further the basic purpose of law enforcement for which the Grand Jury itself was constituted.

16. In *In Re People ex rel. Sawpit Gymnasium*, 60 N.Y.S. 2d 593, the Court, in granting a motion for inspection, pointed out that:

"(t)he present application is prompted by a desire on the part of village authorities to obtain knowledge and information which will enable them to adopt corrective measures to prevent a recurrence of the conditions found by the Grand Jury."

So, too, our Committee desires to prevent a recurrence of alleged fraudulent practices conducted via the powerful and pervasive media of mass communication which are a matter of paramount federal concern.

17. No other application has been made for the relief sought herein.

WHEREFORE, I respectfully ask that an order be made herein granting the Special Subcommittee on Legislative Oversight, acting through its duly authorized counsel and representatives, an inspection of the minutes of the Grand

Jury and directing the stenographer to said Grand Jury to furnish a copy thereof to the Subcommittee upon payment to said stenographer of his fees.

OREN HARRIS,

*Chairman, House Committee on Interstate and Foreign Commerce,
and Special Subcommittee on Legislative Oversight.*

Sworn to before me this 30th day of July 1959.

———, *Notary Public.*

(Notice of motion for an inspection of grand jury minutes, July 30, 1959, follows:)

COURT OF GENERAL SESSIONS, NEW YORK COUNTY

PART I

DOCKET NO. —

*In the Matter of the Report of the Third September 1958 Grand Jury Relating
to the Investigation of Television Quiz Programs*

NOTICE OF MOTION FOR AN INSPECTION OF GRAND JURY MINUTES

SIR: PLEASE TAKE NOTICE that upon the annexed affidavit of the Honorable Oren Harris, M.C., duly sworn to the 30th day of July 1959, upon the presentment filed herein and all the papers and proceedings heretofore filed and had herein, a motion will be made at Part I of this Court to be held at the Court-house, 100 Centre Street, in the City of New York on the 3rd day of August 1959, at 10 o'clock in the forenoon of said day or as soon thereafter as counsel can be heard for an order granting to the Special Subcommittee on Legislative Oversight of the House of Representatives of the United States of America an inspection of the minutes taken before the Grand Jury of the County of New York which resulted in the report of the Third September 1958 Grand Jury relating to the investigation of television quiz programs, and a presentment on June 10, 1959, and directing the stenographer to said Grand Jury to deliver a transcript of said minutes to the said subcommittee upon payment of his fees and for such other and further relief as to this Court may seem just and proper.

Dated July 30th, 1959.

Yours, etc.,

ROBERT W. LISHMAN,

*Attorney for Special Subcommittee on Legislative Oversight, Office and
Post Office Address: % United States District Attorney's Office, South-
ern District of New York, U.S. Courthouse, Foley Square, N.Y.C.*

To:

Hon. FRANK S. HOGAN,

District Attorney, New York County,
155 Leonard Street, New York, N.Y.

(Press release by Chairman Harris announcing TV Quiz Show Investigation, July 31, 1959, follows:)

[For immediate release Friday, July 31, 1959]

HARRIS LEGISLATIVE OVERSIGHT QUIZ SHOW INVESTIGATION ANNOUNCED

The House Subcommittee on Legislative Oversight is conducting an investigation into the conduct of television quiz programs, Representative Oren Harris, chairman of the committee, announced today.

"On Monday," Chairman Harris disclosed, "our Committee will go before the New York Courts and ask to be allowed to inspect the testimony given before the New York Grand Jury which recently completed a 9-month investigation of television quiz shows. The results of this Grand Jury investigation have not yet been made public.

"The great attraction of television quiz shows," the Chairman explained, "was the spectacle of the unknown genius whose wizardry and intellect baffled the nation. The winners on these shows became national folk heroes, and their daily activities were followed on the front pages of the nation's newspapers.

"These programs," Representative Harris continued, "attracted immense viewing audiences, resulting in large profits to producers and sponsors. We now have information," said Harris, "leading us to suspect that contestants on some of the shows were coached and given answers in order to enhance their audience appeal.

"If this is true," said the Chairman, "then the American people have been defrauded on a large scale. It is a matter of intense and paramount federal interest that nationwide media of mass communication not be used for perpetrating fraudulent advertising schemes on the public. We have followed for the past year with great interest," said Harris, "the investigations of the New York Grand Jury. However, we believe that the problem is essentially a national one and a proper concern of the federal government.

"We intend to investigate these programs in order to ensure that effective enforcement measures, designed to prevent the recurrence of any fraud, will be taken by the regulatory agencies of government which are subject to our legislative jurisdiction. We also intend to thoroughly examine the adequacy of existing laws dealing with the practices which our investigation reveals. If our investigation discloses that they are inadequate, we will recommend legislation.

"I wish to stress," Chairman Harris said, "that we are not making accusations of fraud. We are merely investigating, with care and thoroughness, information which has come to our attention.

"It is entirely possible that the quiz programs were legitimate contests of intellectual skill. However, if some of the shows were fraudulent, we believe that the American people, who were fooled by them, are entitled to the truth and to the assurance that such practices will not recur.

"The subcommittee," Representative Harris stressed, "will exercise extreme care so that innocent persons will not be exposed to public ridicule or castigation."

(Judge Mitchell D. Schweitzer's order of August 5, 1959, granting motion for subcommittee to inspect grand jury minutes, follows:)

COURT OF GENERAL SESSIONS, COUNTY OF NEW YORK

At a Term of the Court of General Sessions held in and for the County of New York, at the Criminal Courts Building in the Borough of Manhattan, City of New York, on the 5th day of August 1959.

PRESENT: Honorable Mitchell D. Schweitzer, Judge.

In the matter of the Application of the Honorable Oren Harris, Chairman, House Committee on Interstate and Foreign Commerce and the Special Subcommittee on Legislative Oversight, for an inspection of the Minutes of the Third September 1958 Grand Jury

The Special Subcommittee on Legislative Oversight of the House of Representatives of the United States of America having moved this Court for an order granting it, its counsel and duly authorized representatives an inspection of the minutes taken before the Third September 1958 Grand Jury and directing the stenographers of said Grand Jury, County of New York, to deliver a transcript of said minutes to the said Subcommittee upon payment of proper fees, with the understanding that said minutes are not to be published but to be used solely for investigative purposes or for proper impeachment purposes.

Now on reading and filing the notice of motion dated the 30th day of July 1959, the affidavits of Honorable Oren Harris, Chairman of said Subcommittee, duly verified the 30th day of July 1959, in favor of said motion, and of Honorable Frank S. Hogan, District Attorney of the County of New York, who interposed no objection to the granting of same, and due deliberation having been had thereon, and on filing the opinion of the Court, it is,

ORDERED that the said motion be and the same hereby is in all respects granted, and it is further

ORDERED that the stenographers of the said Grand Jury of the County of New York be and they hereby are, directed to deliver to the said Subcommittee on Legislative Oversight upon the payment of proper fees, a transcript of the minutes taken before the Third September 1958 Grand Jury of the County of New York.

Enter.

(s) MITCHELL D. SCHWEITZER,
Judge of the Court of General Sessions.

(District Attorney Hogan's letter to Chairman Harris, dated September 21, 1959, in reply to Harris letters of September 1 and September 4, respectively, follow:)

DISTRICT ATTORNEY OF THE COUNTY OF NEW YORK,
New York, N.Y., September 21, 1959.

HON. OREN HARRIS,
Chairman, Special Subcommittee on Legislative Oversight,
Congress of the United States,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN HARRIS: Please excuse the delay in answering your gracious letters, dated September 1 and 4, 1959. I have been away from the office on vacation.

I am grateful for your generous expression of appreciation for assistance given by my associates to your Subcommittee in connection with its study of certain aspects of television quiz programs. I am hopeful that we can continue to be of service to you.

I understand that several hundred pages of Grand Jury minutes have already been turned over to your Chief Counsel, Mr. Robert W. Lishman, and his associates, and that a substantial additional quantity of testimony will be delivered for your use within a short time. Mr. Benson, the elusive Grand Jury stenographer, returned to New York on September 9 and we are pushing him hard in an effort to obtain as quickly as possible the testimony he transcribed at a large number of Grand Jury sessions.

I am happy to receive your assurance that the Subcommittee shares our concern lest witnesses, who cooperated with our office and the Grand Jury, be hurt needlessly by publicity attendant upon the proposed hearings. A number of them, particularly contestants, made a clean breast of their participation in fraudulent television quiz programs. Many others, in our opinion, lied before the Grand Jury. Our sympathies, you will understand, naturally go out to those who, in our judgment, told the truth. Indeed, my associates assured them that every effort would be made to keep their identities and their participation in the programs a secret. They understood of course, that if indictments were returned by the Grand Jury, they might be required to testify in court proceedings. I shall hope with you that the facts can be thoroughly presented for legislative purposes while, at the same time, extending a degree of mercy to those contestants who cooperated with our office and the Grand Jury.

We are keeping in mind October 6, 1959, the target date for the commencement of the Subcommittee's hearings, and expect that we will have delivered most of the Grand Jury testimony to you before that time.

Sincerely,

/s/ FRANK S. HOGAN.

SEPTEMBER 1, 1959.

HON. FRANK S. HOGAN,
District Attorney of the County of New York,
New York, N.Y.

DEAR MR. HOGAN: I wish to tell you we deeply appreciate the assistance received from you and the members of your staff in connection with the subcommittee's study of certain aspects of the television quiz programs which were the subject of the presentment of the Third September Grand Jury of New York County. We are interested in ascertaining the adequacy of the Federal Communications Commission and Federal Trade Commission enabling statutes and of their enforcement so far as they pertain to the representation of fixed exhibitions as honest contests of skill. We recognize, on the basis of information presently available to us, that the programs may not have actually misrepresented an advertised product. However, it appears that millions of persons were deceived into repeated viewing and hearing of advertisements of certain products with resultant unfair competitive advantages. We are developing information that competing products which were not involved in this type of advertising campaign suffered sales losses and did not keep up competitively.

I recognize that the TV quiz show presentment reflects many months of intensive and painstaking effort by your office. Without access to the Grand Jury

minutes and the benefits of your work, the task of the subcommittee would be much more difficult and costly.

The charge has been made that at the subcommittee hearings there will be a parade before it of children, young people, and men and women who yielded to temptation. I assure you that this will not occur. We are not interested in exposure for exposure's sake. Our duty is to ascertain the adequacy of the pertinent administrative law and to make appropriate recommendations. We can accomplish this by a thorough and dispassionate presentation of the facts which are relevant and pertinent to the question of the adequacy of existing Federal statutes. This should be done, it seems to me, through the testimony of a comparatively few witnesses. Your comprehensive investigation is enabling us to concentrate upon the essentials and eliminate repetitive and extraneous testimony.

Again with thanks for your assistance in this important matter, I am

Sincerely,

OREN HARRIS, M.C., *Chairman.*

SEPTEMBER 4, 1959.

HON. FRANK S. HOGAN,
District Attorney of the County of New York,

DEAR MR. HOGAN: I wish to inform you that at an executive session today the subcommittee decided to commence the TV quiz show program hearings in Washington on October 6, 1959.

We are still doing our best to locate the Grand Jury stenographer, Mr. Benson, in order to make certain that we will have a transcription of the testimony taken by him. Our efforts to ascertain Mr. Benson's whereabouts have so far been unsuccessful. We were informed by the office of Cravath, de Gersdorff, Swaine & Wood that he is on vacation with address unknown. I have already written Bruce Bromley, Esq., about this matter and am today writing him again.

Sincerely yours,

OREN HARRIS, M.C., *Chairman.*

The CHAIRMAN. We have several communications and statements requesting that they be included in the record. The committee feels that just to take a statement of this kind and in a hearing of this kind and include it in the record without any opportunity to develop the facts is not in keeping with developing the most thorough and complete record for our purpose.

Consequently, the committee has extended to any and all who have an interest in it an invitation to appear and testify if they so desire, not only on the matters which we have been requested to include in the record, but in amplification of questions that would be important therewith.

Also, the committee has made heretofore an announcement and extended a general invitation to any and all who are interested, one way or the other, in this problem, to appear before the committee and testify as to his or her part, if any, or any connection with this entire matter. That general invitation still stands.

This has been a rather tedious job. It has been quite a difficult problem to develop because of the many involvements in connection with this entire problem, not only in the development of the facts and the responsibility of the committee, but with those who are involved all the way along, including contestants.

The committee has tried diligently to protect any innocent person. We have held a good many executive sessions because our attention has been called to the fact that someone might be innocently injured. There is no need for me to outline those actions that we have taken because the record is replete on it.

If anyone has any idea that this committee is out merely for the purpose of unnecessarily injuring someone, I can state for the record

categorically that is an erroneous impression. We are endeavoring to establish facts and develop a record for the legislative purpose of the committee.

The committee has considered this particular angle diligently in reference to the testimony taken in executive session. We have heard a good many witnesses, including the little Chinese girl, including the others that I can outline who were employed at various places, who told us of what would happen to them and their families and their livelihood if their testimony should be taken in public.

We have considered all these things. There is certain testimony that the committee feels ultimately at the appropriate time should be made available to the public because of the importance of its nature and the contents thereof.

However, at this time the committee has not taken such action.

The testimony which so many have inquired about, of certain witnesses, is not yet to be made public. Let me say in that connection, the rules of the House of Representatives provide, and I read now, and I hope everyone will understand them, in paragraph (o) of rule 11.26 of the House, that no evidence or testimony taken in executive session may be released or used in public sessions without the consent of the committee.

I hope everyone understands that. When I use the word "everyone," I underscore it.

The action of the committee in not making certain testimony available at this time public I think in my own opinion is an appropriate action at this time. I would unhesitatingly say that.

I think I know a little something about how hearings should be conducted and investigations carried on for the ultimate good of the entire proceedings.

About further schedule of the committee, it was the hope and expectation of this committee that we would conclude the necessary hearings in connection with this matter during the past week.

Obviously because of developments over which we have no control, this could not be done. Unfortunately, it has not yet been concluded. Therefore, because of the importance of it, the committee is recessing and will recess until November 2, at which time we expect to continue and to conclude within 2 or 3 additional days.

Now as I mentioned a moment ago, there are a good many statements that we have been requested to include in the record.

On Wednesday morning, the second day of the hearings, I received this wire addressed to me as chairman of the committee:

Respectfully request you read following statement into the record of the proceedings before your committee, quote:

"Mr. Van Doren has made himself available to members of the committee staff. He has advised them that at no time was he supplied any questions or answers with respect to his appearances on 'Twenty-One.' He was never assisted in any form and he has no knowledge of any assistance having been given to any other contestant. He further stated that he voluntarily appeared before the New York County grand jury and told that body under oath that he never received any assistance in any form from any person at any time. Mr. Van Doren has advised that he is available to this committee to reiterate what he has told the New York County grand jury under oath and to the members of this committee's staff." Unquote.

(Signed) CHARLES VAN DOREN.

Now permit me to state that it was not the committee's intention at the outset to require the attendance of all contestants. Even in the one show referred to there were 125 to 150 contestants and if the committee undertook to require each and every one to appear, we would be here an unnecessarily long time.

The committee felt that there were sufficient witnesses available who were contestants and who actively participated in various performances of these various shows for the purposes of the committee. We have had many of those contestants—a good number of those contestants—here, most of them in public session, some of them in executive sessions.

But this contestant, whom we had not anticipated on calling as a witness, as it was with others, who were reluctant to appear, seems to have challenged the committee and the facts which have been developed. Now in view of that, the committee replied that evening, October 8, 1959, a wire which I directed, and I quote—this is to Mr. Van Doren:

Re your wire October 6—

it was sent the night of October 6 and received by me and the committee early morning October 7.

Re your wire October 6, the committee is glad to comply with your request to appear and testify and respectfully invites you to appear before the committee either Thursday afternoon, October eighth, or Friday morning, October ninth. Please advise the time we may expect you.

(Signed) OREN HARRIS,
Chairman, Special Subcommittee on Legislative Oversight,
133½ House Office Building.

The committee has received no reply and has no further word from Mr. Van Doren.

In view of these facts and circumstances, the committee feels that the testimony of Mr. Van Doren is most important. He has failed to make himself available as he said he would. Efforts have been made to locate Mr. Van Doren without success.

The committee feels that it gave sufficient time or notice, even alternate dates, to meet the convenience, that is, Thursday afternoon or Friday morning.

Friday afternoon the committee considered the status of Mr. Van Doren and his entire connection very, very carefully, and it considered exceedingly carefully the action this committee should take under the circumstances. After such consideration, the committee decided that in view of the information developed during these hearings, the undisputed and admitted facts, that more than 50 percent of the performances of the quiz show "Twenty-one" were rigged or fixed, as it has been characterized here, meaning, that is, that either the questions or the answers or both were given to many of the contestants, including some of the exceedingly big winners, prior to their appearance on a given performance, arrangements for ties for given performances, the winners when to win, the losers when to lose, made in advance of the program, together with the challenging wire—merely for the record—the facts in requesting it to be included, we felt that his appearance should then be required.

Consequently, a subpoena was issued by me as chairman of this committee, as directed by the committee, last Friday afternoon requiring

his attendance and returnable day. Mr. Van Doren has purposely avoided service.

Under these circumstances, his appearance being most important and necessary to complete this record and the committee purposes and objectives toward a consideration of legislation in this field, the committee will recess until November 2, at which time we expect to have Mr. Van Doren and perhaps some others to complete the hearings on TV shows on which we have held hearings during the last several days, and perhaps one or two others.

Before we conclude this series of hearings this afternoon, I want to pay special tribute to the thorough and painstaking job of investigation which was conducted by the office of district attorney of New York County, Mr. Frank S. Hogan. Without the excellent work of the staff of that office, this subcommittee would have had to spend many months uncovering the sordid facts that have been disclosed in the hearings this week.

There is much more yet to be developed. It would take many more weeks of hearings to explore fully every facet developed by Mr. Hogan's office in the grand jury investigation.

Having had access to the minutes of the grand jury proceedings and having had the full and complete cooperation of Mr. Hogan and his associates, it has been of incalculable value in enabling us to make public the facts of this situation.

Let me also express the subcommittee's appreciation of the fact that assistant district attorney, Mr. Joseph Stone, who personally directed the investigation before the grand jury, has been present with the subcommittee during these hearings as an observer from the district attorney's office. Throughout the course of this work, Mr. Stone has cooperated fully with the subcommittee and our staff and on behalf of the committee, Mr. Stone, I want to express to you our sincere appreciation.

Mr. STONE. Mr. Chairman, on behalf of Frank S. Hogan, the district attorney of New York County, I wish to express my appreciation for your kind remarks.

At your invitation, I have been privileged to attend all of the public and executive sessions of the subcommittee.

On June 10 of this year, the 3d of September 1958, the grand jury of New York County handed up a presentment which was the product of almost 9 months of investigation into certain aspects of a number of television quiz programs. The purpose of the grand jury had been to determine whether the crimes of conspiracy, larceny, commercial bribery, or any other crimes had been committed in the operation of these programs.

While no violations of the penal law had been uncovered, situations of grave public concern affecting the general welfare had been brought to the attention of the grand jury.

The grand jury felt obligated to report to the citizens of New York County on the harmful and corrupting influences which they discovered growing up in their midst. In a brief filed by the district attorney, urging that the presentment should be made public, this statement appears:

Apart from the indisputable fact that the public has a right to know the extent to which it has been duped and cheated, and apart from the right of

television itself to know facts enabling it to clean its house, there can be little doubt that the presentment would lead to legislation and regulation designed to prevent a recurrence or continuation of such fraud. In this connection it is pertinent to recall the grand jury's recommendation that copies of this presentment be transmitted to official agencies capable of acting in that direction.

As I have previously stated, the quiz programs were a tawdry hoax perpetrated on the American people by a group of corrupters. The hearings before this subcommittee last week dramatically corroborated the nature of the findings of the grand jury and the great need for corrective measures.

Thank you.

The CHAIRMAN. Thank you very much, Mr. Stone. We are glad you were able to be with us during this week. You have been very helpful.

We know how deeply concerned you and those in your office, Mr. Hogan, the district attorney, are about this entire problem.

May the Chair thank our guests who have attended these hearings for your cooperation in maintaining order in the fashion that you have, and also for the press, who have been patient and most cooperative in connection with this entire program.

Gentlemen, the committee will recess until the morning of November 2.

(Thereupon, at 5:15 p.m., the committee recessed, to reconvene November 2, 1959.)

×

